

IN THE CRIMINAL COURT OF TENNESSEE

THE THIRTIETH JUDICIAL DISTRICT

W2004-02240-CCA-R3-DD

STAT TENNESSEE,

Plaintiff.

VS.

MICHAEL RIMMER,

Defendant.

Case No. 98-01034

RESENTENCING

JURY SELECTION, OPENING STATEMENTS  
TRIAL OF EVIDENCE, CLOSING ARGUMENTS AND JURY CHARGE  
JURY 5th, 6th, 7th, 8th, 9th, 10th, 12th and 13th, 2004

THE HONORABLE W. FRED AXLEY, PRESIDING JUDGE

Volumes 9 of 13 Volumes

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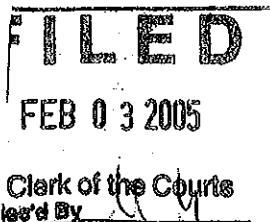
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VOLUME FIVE

CROSS EXAMINATION

BY MR. GARRETT:

Q. Mr. Conaley, let me ask you a couple of questions about your testimony. The statement that you attributed to Mr. Rimmer took place in 1993; is that right?

A. Yes, sir.

Q. Do you remember where you were at the time?

A. Neil Roane unit, sir.

Q. Sir?

A. Neil Roane unit, it's the annex to Northwest Correctional Center.

Q. And where in that unit were you?

A. In my cell.

Q. And was anybody else present in your cell?

A. It could have been, my cell mate might have been, but I'm not sure.

Q. And so you don't recall whether anybody else heard this, other than yourself?

A. No, sir.

Q. And that was in your cell? Was he visiting in your cell?

A. Yes, sir.

Q. Did he visit in your cell, often?

A. Yes, sir.

1 Q. Because y'all had some common ground because he  
2 knew Rhonda, and you knew she had been a good friend of  
3 yours?

4 A. Well, the reason why he visited so often was he was  
5 good friends with my cell mate.

6 Q. I see. And he saw some pictures in your cell; is  
7 that correct?

8 A. Yes, sir.

9 Q. And he recognized Rhonda?

10 A. Yes, sir.

11 Q. Did he share with you the pictures that he had of  
12 Ricci?

13 A. No, sir, not that I remember.

14 Q. Did you ever visit in his cell?

15 A. Not that I remember, sir.

16 Q. Do you ever remember seeing any pictures of Ricci  
17 in his cell?

18 A. No, sir.

19 Q. And other than this conversation that you've told  
20 us about wherein he supposedly said that if he didn't get  
21 that money he would kill her? Any other threats that you're  
22 aware of that he made that you can recall?

23 A. No, sir.

24 Q. That's the extent of it?

25 A. That I remember, sir.

1 Q. And that was in '93?  
2 A. '93.  
3 Q. Heard no more from it, until you read it in the  
4 paper?  
5 A. Yes, sir.  
6 Q. Who did you tell about this?  
7 A. Rhonda -- I guess her name back then was Pannell,  
8 now it's Jordan.  
9 Q. Did you tell her by mail? Did you tell her in  
10 person? How did you tell her?  
11 Q. Face to face, sir.  
12 Q. And where were you when you told her face to face?  
13 A. My parents house.  
14 Q. And when was that?  
15 A. I would say November of 1993.  
16 Q. And you made the same statement to her that you  
17 testified that Mr. Rimmer made to you?  
18 A. Yes, sir.  
19 Q. And do you know if Rhonda informed Ms. Ellsworth?  
20 A. Not to my knowledge, sir. I don't know.  
21 Q. You don't know?  
22 A. No.  
23 Q. And other than telling Rhonda in the conversation  
24 that you had with her while you were on furlough; is that  
25 right?

1 A. Yes, sir.

2 Q. In 1993?

3 A. Yes, sir.

4 Q. Did you bring this to anybody else's attention?

5 A. No, sir.

6 MR. GARRETT: That's all, Your Honor.

7 THE COURT: Redirect?

8 MR. HENDERSON: Nothing further, Your Honor.

9 THE COURT: Thank you, sir. You may step down and  
10 you're free to go about your business.

11 (Witness excused).

12 Call your next witness.

13 MS. JONES: Sandy Young.

14 SANDY YOUNG was called, sworn, examined and  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. JONES:

18 Q. Good afternoon, will you state your name and then  
19 spell your last name?

20 A. My name is Sandra Young, Y-O-U-N-G.

21 Q. And Ms. Young, where are you employed?

22 A. Shelby County Sheriff's Department.

23 Q. And which department do you work for?

24 A. I work for R & I.

25 Q. And what does R & I stand for?

1 A. Records and Identification division.

2 Q. And what is your job title in that department?

3 A. I'm a fingerprint technician.

4 Q. And how long have you done that?

5 A. I've been a fingerprint technician for twenty-eight  
6 years. I worked with the F. B. I. for six and then with the  
7 Sheriff's Department.

8 Q. And what are the duties and responsibilities of  
9 fingerprint technician?

10 A. We verify the fingerprints that come through  
11 system on the arrest ticket with the jacket that we have and  
12 if they don't have a jacket we make a jacket for the  
13 individual when they come in.

14 Q. And you do fingerprints when that individual is  
15 arrested?

16 A. They do in the jail, yes. We don't do them when  
17 they're arrested up in our division. We just verify the  
18 fingerprints they took, along with the R & I number that we  
19 have on them.

20 Q. So you verify that the fingerprints match an R & I  
21 number?

22 A. Yes, ma'am.

23 Q. And what is an R & I number?

24 A. And R & I number is a jacket that you're assigned  
25 whenever you come through the system and if you've been here



1 before you get the same R & I number. But, if you haven't  
2 been here before, you get a brand new one. They start with  
3 one and I believe we're up to three-hundred-twenty-something-  
4 thousand, now. So everybody gets their own individual  
5 number.

6 Q. So it's a number that's uniquely assigned to each  
7 individual that comes in?

8 A. Yes, ma'am.

9 Q. And if that person is arrested once, or numerous  
10 times, they keep that same number?

11 A. Yes, ma'am.

12 Q. And you're able to match that number up with them  
13 through fingerprints?

14 A. Yes, ma'am.

15 Q. Okay. And you keep files, or records of this?

16 A. Yes, ma'am.

17 Q. And are you familiar with how these records are  
18 kept?

19 A. Yes, ma'am.

20 Q. And are they kept in the regular course of your  
21 business?

22 A. Yes, ma'am.

23 Q. And is there a duty to keep these records  
24 accurately?

25 A. Yes, ma'am.

1 Q. Okay. Pursuant to a subpoena, did you bring  
2 records with an R & I number 5-8-1-5-9?

3 A. Yes, ma'am.

4 Q. And is there a fingerprint contained in that  
5 record, also?

6 A. Yes, it belongs to a Michael Dale Rimmer, R-I-M-M-  
7 E-R.

8 Q. So that is who that R & I number is assigned to?

9 A. Yes, ma'am.

10 MS. JONES: I have nothing further, Your Honor.

11 THE COURT: Cross-examine?

12 MR. SPRINGER: Yes, sir. I just have a couple of  
13 questions, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SPRINGER:

16 Q. Could you tell me how many fingerprint technicians  
17 that you have in your office?

18 A. In our office, on our shift, we have seven. And  
19 all together, I believe, there's twenty fingerprint  
20 technicians, from all three shifts.

21 Q. So no matter whoever is booked into jail, one of  
22 those, those fingerprints pass to some technician to verify  
23 the matching R & I number?

24 A. Yes, sir. We are open twenty-four hours a day.

25 Q. And that is always a fingerprint technician that

does that?

A. Yes, sir.

MR. SPRINGER: I have no further questions.

THE COURT: Redirect?

MS. JONES: I have nothing further.

THE COURT: Thank you, you may step down. You're free to go.

(Witness excused).

Call your next witness.

MS. JONES: Ross Herrin.

ROSS HERRIN was called, sworn, examined and testified as follows:

DIRECT EXAMINATION

BY MS. JONES:

Q. Good afternoon, will you state your name and spell your last name, please?

A. Ross Herrin, H-E-R-R-I-N.

Q. Okay. And where are you employed, Mr. Herrin?

A. Criminal Court Clerk's Office.

Q. And what is your position with the Clerk's Office?

A. Keeper of the records.

Q. Okay. And as keeper of the records are you familiar with how the records are kept?

A. Yes, I am.

Q. And are the records kept in the regular course of

business?

A. Yes, they are.

Q. And is there a duty to keep them accurately?

A. There is.

Q. Pursuant to a subpoena did you bring a record concerning indictment numbers 85-00448?

A. Yes, I did.

Q. And 85-00449?

A. Yes.

Q. 89-02736?

A. Yes.

Q. 89-02737?

A. Yes.

Q. And 89-02738?

A. Yes.

Q. In reference to indictment 85-00448, do you have that?

A. I do.

Q. Who is the defendant named in that indictment?

A. Michael Rimmer.

Q. And is there an R & I number with that indictment?

A. I do not have one on the copies, but I do on the original file.

Q. And are those copies of the information that was on the original file?

1 A. They are.

2 Q. And are those certified copies?

3 A. Yes, they are.

4 Q. Okay. And what number is indicated on the original  
5 file, 85-00448?

6 A. The R & I number is 5-8-1-5-9.

7 Q. And in that indictment what is the charge?

8 A. Assault with intent to commit robbery with a deadly  
9 weapon.

10 Q. And is there a disposition of that charge  
11 indicated?

12 A. Yes, there is.

13 Q. And would you state that to the jury, please?

14 A. Mr. Rimmer pled guilty to assault with intent to  
15 commit robbery with a deadly weapon on June the 10th, 1985.

16 Mr. Rimmer --

17 Q. Does it indicate the sentence?

18 A. (No audible reply).

19 Q. Are you looking at the judgement sheet?

20 A. I'm sorry. These are old judgement sheets.

21 They're not up to date ones, like we have today. Give me  
22 just a moment.

23 (A brief pause was had in the proceedings).

24 Yes, five years.

25 Q. And also do you have the file for indictment 85-

00449, as well as certified copies of the judgement sheets?

A. Yes, ma'am, I do.

Q. On that indictment, what is the name of the defendant?

A. Michael Dale Rimmer.

Q. And what R & I number is indicated on that file?

A. 5-8-1-5-9.

Q. And would you tell the jury the charge and disposition of that case?

A. Mr. Rimmer was charged with aggravated assault on June 10th, 1985 and he pled guilty to five years.

Q. And do those two indictment numbers, the sentences, did they run concurrently, or consecutively?

A. They were both concurrently.

Q. And what does that mean? Can you explain it to the jury?

A. That means when he serves one five year sentence, he serves them both at the same time.

Q. Also, Mr. Herrin did you bring a file for indictment number 89-02736 as well as certified copies of the judgement sheet and indictment?

A. Yes, I did.

Q. And for indictment 89-02736, who is the defendant?

A. Michael Rimmer.

Q. And is there an R & I number associated with that

file?

A. Yes, there is, 5-8-1-5-9.

Q. And what was the charge and disposition of that case?

A. Mr. Rimmer was charged with burglary, first degree on June the 6th, 1989. He pled guilty to ten years.

Q. And you also brought a certified copy of the indictment in that case?

A. Yes, I did.

Q. And could you read to the jury what the indictment states?

A. The indictment reads; "State of Tennessee, Shelby County, Criminal Court of Shelby County, January term 1989, the grand jurors of the State of Tennessee, duly elected, impaneled, sworn and charge to inquire in and for the body of the County of Shelby and the State aforesaid, upon their oath present that Michael Dale Rimmer, late of the County aforesaid, heretofore, to-wit; on the 14th day of January, 1989, before the finding of this indictment in the County of aforesaid, did commit the offense of burglary in the first degree by unlawfully, feloniously and burglarously, break into and entering the mansion house of Ricci Ellsworth, in the night time with intent, unlawfully and feloniously to commit the felony of aggravated assault upon the person of Ricci Ellsworth".

1 Q. And I believe that you stated that the sentence in  
2 that case -- that he pled guilty and was sentenced to  
3 serve ten years?

4 A. That is correct.

5 Q. You also brought the file for indictment 89-02737,  
6 along with certified copies of the judgement sheet and  
7 indictment; is that correct?

8 A. That is correct.

9 Q. And who is the defendant in that case?

10 A. It's Michael Dale Rimmer.

11 Q. And what R & I number is attached to that?

12 A. 5-8-1-5-9.

13 Q. And does it show a charge and disposition of that  
14 case?

15 A. Yes, it does.

16 Q. Would you relay that to the jury, please?

17 A. The charge was aggravated assault. Mr. Rimmer pled  
18 to that charge on the 6th day of June, 1989. He was  
19 sentenced to five years.

20 Q. And would you please read the indictment in that  
21 case?

22 A. "State of Tennessee, Shelby County, Criminal Court  
23 of Shelby County, January term 1989, the grand jurors of the  
24 State of Tennessee, duly elected, impaneled, sworn and charge  
25 to inquire in and for the body of the County of Shelby and



1 the State aforesaid, upon their oath present that Michael  
2 Dale Rimmer, late of the County aforesaid, heretofore, to-  
3 wit; on the 14th day of January, 1989, before the finding of  
4 this indictment in the County of aforesaid, did unlawfully  
5 feloniously and willfully cause bodily injury to Ricci  
6 Ellsworth, under circumstances manifesting extreme  
7 indifference to the value of human life".

8 Q. And as you stated he pled guilty to that on June  
9 the 6th, of 1989 to five years; is that correct?

10 A. That is correct.

11 Q. You also brought with you file 89-02738 as well as  
12 certified copies of the judgement sheets for that indictment?

13 A. Yes.

14 Q. Who is the defendant in that case?

15 A. Michael Dale Rimmer.

16 Q. And what R & I number is on the file?

17 A. 5-8-1-5-9.

18 Q. And what is the charge and disposition of that  
19 case?

20 A. The charge is rape on the 6th day of June, 1989.  
21 Mr. Rimmer pled guilty to that charge and was sentenced to  
22 ten years.

23 Q. And would you read the indictment to the jury,  
24 please?

25 A. "State of Tennessee, Shelby County, Criminal Court

1 of Shelby County, January term 1989, the grand jurors of the  
2 State of Tennessee, duly elected, impaneled, sworn and charge  
3 to inquire in and for the body of the County of Shelby and  
4 the State aforesaid, upon their oath present that Michael  
5 Dale Rimmer, late of the County aforesaid, heretofore, to-  
6 wit; on the 14th day of January, 1989, before the finding of  
7 this indictment in the County of aforesaid, did unlawfully  
8 and feloniously and forcibly sexually penetrate, Ricci  
9 Ellsworth, thereby committing the offense of rape".

10 Q. And you stated that he pled guilty to that on June  
11 6th, of 1989 and sentenced to serve ten years?

12 A. That is correct.

13 Q. And does it indicate how those sentences were to  
14 run? Consecutively, or concurrently?

15 A. This sentence was to serve concurrently.

16 Q. And what does that mean?

17 A. It means that when he was sentenced to ten years he  
18 served this, along with the other years, at the same time.

19 Q. And you brought certified copies of the judgement  
20 sheets, as well as the indictments with you; is that correct?

21 A. That is correct.

22 MS. JONES: Your Honor, we ask that this be marked  
23 as collective exhibits thirty.

24 THE COURT: Yeah, okay. Any objections.

25 MR. GARRETT: No, Your Honor.

1 THE COURT: Show them as a collective exhibit  
2 number thirty into evidence, through the honorable Ross  
3 Herrin.

4 (Exhibit number thirty was marked and filed for  
5 record as collective evidence.)

6 MS. JONES: I have no further questions, Your  
7 Honor.

8 THE COURT: Cross?

9 MR. GARRETT: Just a couple of questions.

10 CROSS-EXAMINATION

11 BY MR. GARRETT:

12 Q. Mr. Herrin, do all of the charges and convictions  
13 that you have just read to the jury involve Mr. Michael  
14 Rimmer; is that correct?

15 A. That is correct.

16 Q. And they were disposed of by guilty pleas on his  
17 part; is that right?

18 A. That is correct.

19 Q. And for the sake of the jury, does that mean that  
20 he did not go to trial on any of these?

21 A. That is correct.

22 Q. None of these cases were heard by a Judge?

23 A. That is correct.

24 MR. GARRETT: That's all.

25 THE COURT: Any redirect?

1 MS. JONES: No further questions, Your Honor.

2 THE COURT: Step down, please, sir.

3 (Witness excused).

4 Call your next witness.

5 MR. HENDERSON: May we approach the bench for a  
6 second?

7 THE COURT: Yeah.

8 (A bench conference was held on the record  
9 in the presence of the jury, but out of it's  
10 hearing and the following proceedings were  
11 had, to-wit:)

12 MR. HENDERSON: We've run out of witnesses for  
13 today and we're now down to our last five.

14 THE COURT: I thought you had them here for  
15 tonight? Can you get them here in the morning?

16 MR. HENDERSON: I'll have them here in the morning.

17 THE COURT: So you'll have them?

18 MR. HENDERSON: Yes, sir. We have Ms. Zavaro  
19 coming in from Nashville and the other's are all here, or I  
20 mean, here in town.

21 THE COURT: Who's coming in from Nashville?

22 MR. HENDERSON: Samera Zavaro. That's the lady  
23 from the T. B. I. lab.

24 THE COURT: Oh, yeah.

25 MR. HENDERSON: And that's as to the chain of

1 custody.

2 THE COURT: I want to see you spell it, without  
3 asking.

4 MR. HENDERSON: I had to spell it off of my trial  
5 notebook.

6 THE COURT: Well, she doesn't even look like a  
7 Samera Zavarro.

8 MR. HENDERSON: Well, at least she doesn't look  
9 like Freda Saharovicci.

10 THE COURT: Oh, my God, who does? All right. I'll  
11 tell the jury what's going on. Thank you.

12 (Said bench conference having been completed,  
13 the following proceedings were had in the presence  
14 of the jury:)

15 THE COURT: We have one witness for the state that  
16 has to come from Nashville and will be here in the morning.  
17 The balance of the proof will be tomorrow, with the state.  
18 I'm satisfied they'll rest their case tomorrow.

19 In the meantime, don't discuss that case among  
20 yourselves, or allow anyone to discuss it with you. Step  
21 out.

22 (Court adjourned at 5:00 p.m. continuing this cause  
23 for trial to Friday, January 9, 2004, when the  
24 following proceedings were had in the presence of  
25 the jury.)

1 THE COURT: Call your next witness.

2 MR. HENDERSON: I'd call Officer Helldorfer.

3 T. J. HELLDORFER was called, sworn, examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HENDERSON

7 Q. Tell us your full name, please, sir?

8 A. T. J. Helldorfer, H-E-L-L-D-O-R-F-E-R.

9 Q. Where are you employed?

10 A. City of Memphis Police Department.

11 Q. How long have you been employed by the police  
12 department?

13 A. Twenty-four and a half years.

14 Q. Where are you assigned right now?

15 A. Homicide bureau.

16 Q. How long have you been assigned there?

17 A. Nearly eight years.

18 Q. Can I direct your attention back to 1997 and 1998,  
19 were you in homicide back then?

20 A. Yes, I was.

21 Q. Did you participate in the investigation in the  
22 case of a murder of Ricci Ellsworth?

23 A. I did.

24 Q. At some point did you look for the suspect, Michael  
25 Rimmer?

1 A. Yes, I did.

2 Q. Did you ever attain contact with his brother  
3 Richard Rimmer?

4 A. I did.

5 Q. Did you ever search Mr. Richard Rimmer's property?

6 A. Yes.

7 Q. Where was that property located?

8 A. Down in Nesbitt, Mississippi.

9 Q. And Nesbitt, Mississippi, how far from Memphis is  
10 that?

11 A. Oh, south of the line, probably, maybe, fifteen  
12 miles.

13 Q. Easy driving distance?

14 A. Yes.

15 Q. What efforts did you make in searching that  
16 property?

17 A. We took cadaver dogs, we used the helicopter with  
18 the Flora system, which is an infra-red, heat detection  
19 system. And quite a few investigators involved here with us  
20 and we even had scuba divers out in a lake.

21 Q. And you did not find Ricci Ellsworth body?

22 A. No, we did not.

23 Q. At some point an automobile was seized in Indiana  
24 and sent back down here. Did you have any contact with that  
25 automobile?

1 A. Yes, sir, I did.

2 Q. And what was your contact with that automobile?

3 A. I met the wrecker driver that brought the car back  
4 at Frayser Boulevard and Danny Thomas and he followed me to  
5 our crime scene tunnel and it was off-loaded at that  
6 location.

7 Q. And as you observed the car how was it prepared, or  
8 sealed, while it was on this truck?

9 A. It was wrapped up with a blue tarp.

10 Q. And was it being towed with it's wheels on the  
11 ground, or was it on a flat bed, or what?

12 A. It was on a flat bed.

13 Q. Was it covered in any way?

14 A. Covered with a tarp.

15 Q. At some point in 1998 were you asked to go to the  
16 Memphis Inn to see about photographing a crack in a sink in a  
17 bath room?

18 A. Yes, I did.

19 Q. Did you try to do that?

20 A. I tried, but we had problems with our camera. The  
21 flash on the Polaroid it whited out -- with the porcelain  
22 finish, it whited out the crack and we just couldn't see the  
23 crack.

24 Q. With your naked eye could you see the crack?

25 A. Oh, it was obvious, yes.



1 Q. So since you couldn't photograph it, what did you  
2 do?

3 A. I took the sink.

4 MR. HENDERSON: Your Honor, if I could ask the  
5 deputies to help -- or could I ask the witness to step down  
6 and approach this exhibit.

7 THE COURT: Yeah, why don't you do that.

8 Q. If you will step down here and approach exhibit  
9 number three for us, please and tell me if you recognize  
10 that?

11 A. Yes, this is the sink that I took from the Inn.

12 Q. Is that in the same condition that you took it in  
13 at that time?

14 A. It is.

15 MR. HENDERSON: I have no further questions of this  
16 witness, Your Honor.

17 THE COURT: All right. You may cross-examine.

18 MR. SPRINGER: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SPRINGER:

21 Q. Officer Helldorfer, when was the first time that  
22 you made a trip to Mississippi?

23 A. The very first time?

24 Q. Yes.

25 A. Oh, probably either the day that we went to the

1 scene, or maybe the next day.

2 Q. What day did you make it to the scene?

3 A. February the 8th of '97. We were probably down  
4 there for the first two weeks, every day.

5 Q. Okay. Now, how many trips, in all, did you make  
6 down to Mississippi?

7 A. Easily a dozen.

8 Q. And did you all have a plan for searching for a  
9 victim? And I believe that you were searching for Mr.  
10 Rimmer; as well?

11 A. Primarily, we were looking for the victim at that  
12 point.

13 Q. Now, did you all have a plan, actually, for looking  
14 for a victim? Was there anything based upon the time that  
15 this may have happened? How far an individual may have been  
16 able to travel from that point? What guided you in that  
17 particular direction?

18 A. To his brother's house?

19 Q. Yes.

20 A. The investigation took us to his brother's house.  
21 After talking with Richard Rimmer he admitted that he had  
22 been to the house.

23 Q. Okay. Now, did you go any other places besides  
24 Nesbitt, Mississippi?

25 A. We went down to Arkabutla.

1 Q. What I'm trying to get at, did you organize this  
2 search? Was the search organized?

3 A. Yes, it was.

4 Q. How was it organized, would you explain, briefly,  
5 how it was organized?

6 A. Well, I'm not the one who organized it, but as an  
7 individual who was there, we had cadaver dogs. At one point  
8 we had an individual ground penetrating sonar, walking over  
9 an area that we were looking for based on witness  
10 information. And we were trying to cover in methodical  
11 grid searches, where we may find the body.

12 Q. Did you ever search anywhere near the crime scene?

13 A. We went room to room, knocking on doors.

14 Q. Did you search the entire area of that  
15 neighborhood?

16 A. No.

17 Q. Did you search anywhere in Tennessee?

18 A. No.

19 Q. So the only place that your search was conducted  
20 was in this Nesbitt, Mississippi area, Arkabutla area?

21 A. Yes.

22 Q. And you stated that you also saw the vehicle once  
23 it had been towed to Memphis?

24 A. Yes.

25 Q. Now, do you recall what date that vehicle arrived

1 in Memphis?

2 A. I'd have to look at my supplement to see the date  
3 that I met the wrecker driver.

4 Q. And when you met the wrecker driver, you say that  
5 it was covered in a blue tarp. At any point in time was that  
6 blue tarp removed?

7 A. Not in my presence.

8 Q. Okay. And were you privy to any other evidence  
9 outside of the vehicle that had come with that particular  
10 vehicle?

11 A. No.

12 MR. SPRINGER: If the Court would indulge me just a  
13 moment?

14 THE COURT: Yes, sir.

15 (A brief pause was had in the proceedings).

16 MR. SPRINGER: I have no further questions of this  
17 witness, Your Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. HENDERSON:

21 Q. Whereabouts in Arkabutla Lake did you look?

22 A. We went to the area called, Plantation Point.

23 Q. Would you describe that area for the ladies and  
24 gentlemen of the jury?

25 A. It's a very secluded area off of Hwy 301, on the

1 north side of the lake. To get to that location it is a car  
2 path, basically, that you could see the wheel tracks to the  
3 very end. There is a picnic table there. It's a little bit  
4 higher than the water table. And then there's a boat launch  
5 ramp that you could launch a flat bed boat, if you wanted to.

6 Q. Does the water table at that part of the lake  
7 change during the year?

8 A. Dramatically. Yes, it does.

9 Q. Without telling us what the reason was, did you  
10 have a reason to restrict your search to those two areas in  
11 Mississippi?

12 A. Yes.

13 MR. HENDERSON: Nothing further, Your Honor.

14 THE COURT: Recross?

15 MR. SPRINGER: None, Your Honor.

16 THE COURT: Thank you. You may step down. You're  
17 free to go about your business.

18 (Witness excused).

19 Call your next witness.

20 MS. JONES: Stacey Powell.

21 STACEY POWELL was called, sworn, examined and  
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MS. JONES:

25 Q. State your name and spell your last name?

1 A. My name's Stacey Powell, last name is spelled, P-O-  
2 W-E-L-L.

3 Q. And Ms. Powell, where are you currently employed?

4 A. I'm currently employed as a family practitioner in  
5 private practice and I also work for Memphis Sexual Assault  
6 Resource Center, in the capacity of sexual assault nurse  
7 examiner.

8 Q. And in 1997, were you employed as a nurse  
9 practitioner then?

10 A. Yes, I was.

11 Q. And where were you employed?

12 A. At the Memphis Sexual Assault Resource Center.

13 Q. And as a nurse practitioner what type of  
14 educational training does that require?

15 A. That requires a nursing degree, bachelor's of  
16 science in nursing. It also requires further education as a  
17 master prepared nurse with certification, specifically to  
18 family nurse practitioner's, board certified.

19 Q. And what were your duties and responsibilities as a  
20 nurse practitioner at the sexual assault center back in 1997?

21 A. As a nurse practitioner at the sexual assault  
22 resource center we provided forensic exams on patients who  
23 come in for -- who have been sexually assaulted, for either  
24 collection of evidence, or any type of evidence for forensic  
25 exams.

1 Q. And collecting evidence, would that include taking  
2 blood samples?

3 A. Yes.

4 Q. And in July of 1997, were you requested to take a  
5 blood sample from Marjorie Floyd?

6 A. Yes, I was.

7 Q. And did you take that?

8 A. Yes, I did.

9 Q. Who was present when you took that sample?

10 A. The patient was present, Ms. Marjorie Floyd and--

11 THE COURT: You're going to have to speak up.  
12 You're awfully soft spoken.

13 Q. You don't need to speak in the mike, just talk in a  
14 louder voice.

15 A. Okay. I was present, the patient who I took the  
16 blood from was present and the F. B. I. agent who came with  
17 the patient.

18 Q. And was it an F. B. I. agent, or was it an officer  
19 with the Memphis Police Department?

20 A. Officer Shemwell. I don't remember if he was an F.  
21 B. I. agent, or an officer from the Memphis Police  
22 Department.

23 Q. But, it was Officer Shemwell?

24 A. Yes.

25 Q. Now, what procedure did you use to draw the blood?

1 Would you explain that to the jury?

2 A. Sure. The procedure used to collect blood from Ms.  
3 Floyd was, first we use gloves, put gloves on and obtain a  
4 blank container, with a needle, and a container for the  
5 blood. We raise the sleeve up and a turnick was applied,  
6 blood is drawn with a needle and put into a tube.

7 Q. And what did you do with the blood in that tube?

8 A. I put the blood in that tube and I went into the  
9 forensic lab that we have. I put on another pair of gloves  
10 and took a sterile needle, extracted the blood out of the  
11 tube and put the blood on a blood standard.

12 Q. Would you explain to the jury what a standard is?

13 A. A standard is a cardboard for blood to be applied,  
14 so that it is dried blood. And it is for the sole purpose of  
15 DNA testing.

16 Q. And once you created this standard, what did you do  
17 with it?

18 A. Once I created the standard under sterile  
19 technique, I made sure that I had a mask on and that I was  
20 behind a glass seal, so that that would prevent contamination  
21 of the blood sample and the DNA standard as I was dropping  
22 the blood onto the cardboard. Once I completed that, I seal  
23 the cardboard and discarded the blood from the tube into the  
24 sharp container so that there would be no further injury from  
25 glass. So I filled the blood standard and put it into an



envelope kit. We call it paternity testing kit.

Q. And when you sealed the envelope, did you initial this envelope in any way?

A. I initialed the envelope and also I presented the envelope to the officer and he signed it and I signed it, also.

Q. And when you say you presented it to the officer, did you give the envelope to Officer Shemwell?

A. Yes.

Q. And after you gave it to him, did you do anything else with the sample? Did you have any further contact with the blood sample?

A. No, I had no further contact with the sample.

Q. That was your involvement in this case?

A. Yes.

MS. JONES: I have no further questions.

THE COURT: You may cross-examine.

MR. SPRINGER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SPRINGER:

Q. Ms. Powell, I have a few questions for you, please.

A. Okay.

Q. How much blood, exactly, did you draw from Ms. Floyd?

A. About six cc's.

1 Q. Okay. And if you could for the jury, could you  
2 explain about how much six cc's of blood is?

3 A. About that much blood, (indicating), in a tube that  
4 was about that high (indicating), and that much blood.

5 Q. And now you explained the process and as I  
6 understand the process of the way you explained it, you drew  
7 the six cc's of blood and then you took a syringe, after you  
8 changed gloves and made sure that the whole process was  
9 sterile?

10 A. Uh-huh.

11 Q. And blotted the blood on the standard?

12 A. Uh-huh.

13 Q. And why did you blot the blood on the standard?

14 A. The blood is blotted on the standard to provide DNA  
15 testing and to maintain the safety and security of the chain  
16 of custody evidence.

17 Q. And so attributed prior to drawing Ms. Floyd's  
18 blood that this was going to be used for DNA testing?

19 A. Yes.

20 Q. And after you did the blood standard, what did you  
21 do? How much blood was used in the blood standard?

22 A. Probably, about two cc's.

23 Q. And so you had approximately four cc's of blood  
24 remaining?

25 A. Yes.

1 Q. And what happened to the other four cc's of blood?

2 A. That vile was put into a sharpies container, within  
3 our laboratory for discarding.

4 Q. And so, that is destroyed after you made the  
5 standard?

6 A. Yes, sir. Because it is in the container, so it's  
7 inaccessible.

8 Q. And the standard is sealed, as you stated, and in  
9 this particular incident it was immediately turned over to  
10 Officer Shemwell?

11 A. After being properly sealed and signed, yes.

12 Q. Did you give Officer Shemwell any other evidence?  
13 Did he request any other evidence, or did you give him any  
14 other evidence, except for that blood standard?

15 A. No, no other evidence, sir.

16 MR. SPRINGER: If I could have just a moment, Your  
17 Honor?

18 THE COURT: Yes.

19 (A brief pause was had in the proceedings).

20 MR. SPRINGER: Your Honor, I have no further  
21 questions.

22 THE COURT: Any redirect?

23 MS. JONES: Nothing further, Your Honor.

24 THE COURT: Thank you, ma'am, you're free to go  
25 about your business.

(Witness excused).

Call your next witness.

MS. JONES: Sergeant Ashton.

WILLIAM L. ASHTON was called, sworn, examined and testified as follows:

DIRECT EXAMINATION

BY MS. JONES:

Q. Good morning, Sergeant Ashton.

A. Good morning.

Q. Would you state your name and spell your last name, please?

A. Sergeant William L. Ashton, A-S-H-T-O-N.

Q. And where are you employed?

A. Memphis Police Department.

Q. And what bureau are you assigned and what is your classification and assignment?

A. I'm a Sergeant in the homicide bureau. I investigate homicides.

Q. And how long have you been doing that?

A. Going on eight years now.

Q. So you were employed in homicide, in 1997?

A. Yes, ma'am.

Q. In 1997, I believe in March of 1997, did you have an occasion to go to Franklin, Indiana?

A. Yes, ma'am, I did.

1 Q. And why did you do that?

2 A. I went up there to interview Michael Rimmer, in  
3 regard to a case that we were investigating?

4 Q. And did any other officers from the Memphis Police  
5 Department go with you?

6 A. Sergeant Shemwell and Sergeant Wilkinson  
7 accompanied me up there.

8 Q. And where was Michael Rimmer in Indiana, when you  
9 went to see him?

10 A. He was in the county jail.

11 Q. And when you refer to Michael Rimmer, do you see  
12 him present in the courtroom today?

13 A. Yes, ma'am, he'll be sitting right behind defense  
14 counsel, dressed in the blue shirt.

15 MS. JONES: Let the record reflect that he has  
16 identified the defendant, Michael Rimmer.

17 THE COURT: You may proceed.

18 Q. And when you arrived in the Johnson City jail, did  
19 you have an opportunity to interview Michael Rimmer?

20 A. Yes, ma'am, I did.

21 Q. And how many times did you interview him?

22 A. Two days.

23 Q. Two days?

24 A. Yes, ma'am.

25 Q. Would that be March the 6th of 1997 and March the

7th of 1997?

A. Yes, ma'am.

Q. On March the 6th of 1997, when you interviewed the defendant, did you introduce yourself?

A. Yes, ma'am. Both Sergeant Wilkinson and myself introduced ourselves and told him who we were and where we were from.

Q. You were the two officers present during this interview?

A. Yes, ma'am.

Q. Was anyone else present besides the defendant?

A. No, ma'am.

Q. So the three of you?

A. Yes, ma'am.

Q. And after you introduced yourselves, did you advise the defendant of his rights?

A. Yes, ma'am, we did.

Q. And did he agree to speak with you at that time?

A. Yes, ma'am, he did.

Q. Now, once you began this interview, did you advise him of why you were there?

A. Sergeant Wilkinson advised him that we need to talk to him about the car that he was driving when he was arrested. And when he did that, Michael Rimmer kind of got a relaxed posture and kind of calmed down. And he said, "Oh,

1 you must think the car is stolen". He said, "I can clear  
2 that up just like that when we get back to Memphis".

3 Q. And did he question about anything else?

4 A. Well, after that, we advised him that we wanted to  
5 talk to him about Ricci.

6 Q. And how did he react to that?

7 A. Well, after we told him that we wanted to talk to  
8 him about Ricci, Sergeant Wilkinson didn't say another word  
9 and I didn't say another word. We just sat there in silence.  
10 And Michael, you could see this anxiety come over him and he  
11 would look at Sergeant Wilkinson and look back at me and we  
12 were at opposite ends of the table, back and forth and back  
13 and forth. And finally, he was putting out his hands, 'What,  
14 what, what'? And he got real excited and agitated.

15 Q. You said that you were sitting at opposite ends of  
16 the table?

17 A. Yes, ma'am.

18 Q. Could you explain to the jury where you were  
19 sitting and where Officer Wilkinson was sitting and where the  
20 defendant was sitting, so that they could get an idea?

21 A. Yes, ma'am. In this room where we were in there  
22 was a table, about the length of the table that you see the  
23 attorneys sitting at here. And probably about twice as wide.  
24 Michael Rimmer was sitting at the very end, in a chair at  
25 that end. Sergeant Wilkinson was sitting directly across

1 from him in a chair at the side of the table there. And  
2 then, I took a chair about two or three chairs back up the  
3 table, away from him up here, to kind of put a distance  
4 between all of us.

5 Q. So the defendant was sitting at one end of the  
6 table?

7 A. Yes, ma'am.

8 Q. Wilkinson was sitting on the side of the defendant?

9 A. Yes, ma'am.

10 Q. And you were sitting opposite?

11 A. Yes, ma'am.

12 Q. And the defendant was looking back and forth at  
13 y'all?

14 A. Yes, ma'am.

15 Q. After he questioned you, "What about Ricci"? What  
16 did you proceed to do?

17 A. Well, we told him, at first, that Ricci was  
18 missing. And he said, "Oh that can be cleared up, she's  
19 probably gone home to her mother in Alabama, she does it all  
20 the time." And then we told him, "No, we think Ricci is  
21 dead". And his response to that was, "She's not dead, you  
22 don't have the body".

23 Q. At any time prior to him making that statement had  
24 you informed him that you had not found the body?

25 A. No, ma'am.



1 Q. After he made that statement, did your interview  
2 continue?

3 A. Yes, ma'am. We continued on in the interview and  
4 he kept denying any knowledge of anything about the homicide.

5 Q. All right. During this phase of the interview did  
6 you ever question him on why he had left Memphis?

7 A. Yes, ma'am. We asked him why he suddenly just up  
8 and left Memphis.

9 Q. What did he tell you?

10 A. He said it was his nature just to get up and leave  
11 like that.

12 Q. Do you recall how long this interview was?

13 A. Not off the top of my head. I could look at the  
14 supplement and I could give you the times off of that.

15 Q. Do you think it was more than an hour?

16 A. Yes, ma'am.

17 Q. And did you have any breaks during this interview?

18 A. We took numerous breaks during the interview.  
19 Michael would ask us to take a bath room break, smoke a  
20 cigarette, go get water and this happened, quite frequently.  
21 I thought this was awful strange, as much water as he was  
22 drinking. But, we had to stop and we'd go get him some water  
23 and let him use the bathroom. We stepped outside the back  
24 door and let him smoke several cigarettes during this.

25 Q. You also interviewed him on March 7th of 1997, so

1 that was the very next day?

2 A. Yes, ma'am.

3 Q. And do you recall if you continued that interview  
4 in the morning, or the afternoon?

5 A. To the best of my recollection it was around 9:00,  
6 or 9:30 in the morning.

7 Q. And who was present on this second day?

8 A. It would have been Michael Rimmer, myself and  
9 Sergeant Wilkinson, again.

10 Q. And did you have the same basic seating arrangement  
11 as you had the day prior?

12 A. Yes, ma'am.

13 Q. And during this interview would you describe for  
14 the jury what the defendant's demeanor was?

15 A. He was very agitated and hostile towards us at that  
16 time.

17 Q. And when you say "hostile", was he doing certain  
18 things that made you decide he was hostile?

19 A. For no apparent reason, while talking to him, he  
20 would just have an out-burst and start cussing us and  
21 screaming and hollering and you know acting in, what I'd say  
22 is hostile. And when it was brought to his attention,  
23 "Michael, we haven't said a cuss word to you, we haven't  
24 raised our voices, why are you acting this way?" And then he  
25 would catch himself and calm down and apologize for his out-

1 burst. But, these out-burst happened several times.

2 Q. But, he had agreed to speak with you again on this?

3 A. Yes, ma'am.

4 Q. Do you recall if the defendant ever indicated why  
5 he was hostile? What caused him to be hostile with you?

6 A. He never told us why he was acting out like that.

7 Q. Sergeant Ashton, were you also involved in  
8 transporting some evidence in this case from Memphis to the  
9 T. B. I. lab?

10 A. Yes, ma'am, I was.

11 Q. Okay. And you transported some evidence from the  
12 crime scene as well as from the car that the defendant was  
13 driving in when he was arrested?

14 A. Yes, ma'am.

15 Q. And did you transport a car to the T. B. I. ?

16 A. I escorted the car up there. I had a city wrecker  
17 meet me. We had the car confined out at our crime scene unit  
18 and we had it under a tarp. And I had a city wrecker meet me  
19 there and we put it on the back of a city wrecker and I had  
20 them follow me to Nashville, so I could monitor the transfer  
21 of that evidence up there.

22 Q. So you did monitor the transfer of the vehicle?

23 A. Yes, ma'am.

24 Q. And you delivered it to the T. B. I. in Nashville?

25 A. Yes, ma'am, I did.

1 MS. JONES: I have no further questions, Your  
2 Honor.

3 THE COURT: You may cross-examine.

4 MR. GARRETT: Thank you, Judge.

5 CROSS-EXAMINATION

6 BY MR. GARRETT:

7 Q. Sergeant Ashton, throughout your conversations with  
8 and interviews of Michael Rimmer, he consistently denied  
9 knowing anything about anything about any disappearance of  
10 Ms. Ricci; isn't that correct?

11 A. That's correct, sir.

12 Q. Now, how did y'all travel to Indiana? Did y'all  
13 fly, or drive together, how did you get there?

14 A. We flew on a commercial airline.

15 Q. Did you make any preparations for this interview  
16 before you left Memphis? Did you have a plan as to how y'all  
17 were going to approach this, in your interview with Mr.  
18 Rimmer?

19 A. No, sir.

20 Q. Who did you talk to to get to see Mr. Rimmer when  
21 you first got there?

22 A. We met with a couple of Sheriff's Deputies from  
23 that jurisdiction up there. They met us at the airport.

24 Q. They met you at the airport?

25 A. Yes, sir.

Q. And where did you go from there?

A. We landed in Indianapolis, they took us to Franklin, they drove us by to show us where the jail was so that we could get there in the morning, because we got there late that night and then we went to the hotel for the evening.

Q. Did you ever talk to the local officers about the reason for you being there and what you planned to do?

A. They knew why we were there, sir.

Q. So there was no need -- you didn't have any discussion with them regarding that; is that correct?

A. I wasn't the case coordinator. You'd have to ask Sergeant Shemwell those questions, sir.

Q. And Sergeant Shemwell and Officer Wilkinson, I believe you said, were with you; is that correct?

A. Yes, sir.

Q. And so you went to the hotel that night and you got up the next morning, what time? And what time did you move out to complete your mission?

A. I would probably think that we got up around 7:00, or 8:00 o'clock, had breakfast and made our way over to the county jail.

Q. You went directly to the county jail?

A. From where?

Q. From the hotel, or from wherever you had breakfast?

1 A. From where I had breakfast to the jail, yes, sir.

2 Q. My question is, you didn't go back to the Sheriff's  
3 Office to talk to the officers that --

4 A. The jail is at the Sheriff's Office, sir.

5 Q. And is that where Mr. Rimmer was housed?

6 A. Yes, sir.

7 Q. When you were first given access to Mr. Rimmer,  
8 tell us, first of all, where did this take place?

9 A. This took place in the Sheriff's building there.

10 Q. And would you describe the room that you were in?

11 A. It was a conference room with a large table, as I  
12 described earlier, about the length of that table, maybe,  
13 twice as wide.

14 Q. And was Mr. Rimmer in this room when you all went  
15 in or were y'all there and he was brought in?

16 A. We were there and he was brought in, sir.

17 Q. And did you discuss your seating arrangement before  
18 Mr. Rimmer was brought in? Did you sit where you were by  
19 design?

20 A. I picked my seat. I don't know how Sergeant  
21 Wilkinson picked his seat and I know that we placed Mr.  
22 Rimmer at the end of the table.

23 Q. But, Sergeant Shemwell didn't say, "I want you to  
24 sit here and the other one sit over here" and have him at  
25 the table for any strategic reason?

1 A. No, sir.

2 Q. Was there any equipment in this room where this  
3 table was? Any electronic equipment of any type?

4 A. I recall a telephone being in there, but other than  
5 that, I don't recall what else was in that room.

6 Q. Did you have any recording equipment? Did you have  
7 a tape recorder?

8 A. No, sir.

9 Q. Did anybody discuss the possibility of having a  
10 tape recorder to record this interview so we could preserve  
11 it forever so there would be no question about what was said?

12 A. You'd have to ask Sergeant Shemwell, the case  
13 coordinator about that, I wasn't in on that.

14 Q. Let me ask you, did you make any mention that we  
15 should have a tape recorder, so there will be no question  
16 about what was said here?

17 A. No, sir.

18 Q. Was there any discussion of that in your presence?

19 A. I don't recall that being discussed, sir.

20 Q. In your experience as a homicide investigator with  
21 the Memphis Police Department, is it common for you to use  
22 tape recorders to record interviews of suspects?

23 A. In the almost eight years that I've been there, no,  
24 sir.

25 Q. Is there some reason that you don't do that?

1 A. I don't make policies for the police department. I  
2 don't know the reason.

3 Q. Are you saying that the police department's policy  
4 is not to use recorders?

5 A. I don't know what their policy is on that, sir. I  
6 know in my time at the homicide squad, that's never happened.  
7 We've never had that happen.

8 Q. You've been there with the police department for  
9 eight years as a homicide investigator and you don't know  
10 what the policy is?

11 A. I do the job, when they ask me to do the job and I  
12 don't question it, sir. They don't provide me with recording  
13 equipment. If they thought I needed it, I would have it.

14 Q. This first interview took place on what date, sir?

15 A. If you'll pass forward my supplement I can give you  
16 the date off there, sir.

17 MR. GARRETT: May the witness be passed his  
18 supplement, please?

19 THE COURT: Hand it to him, yes, sir.

20 (Document tendered to witness).

21 A. Thank you.

22 Q. Can you identify the document that you were just  
23 passed and tell us what the date is on that and what it is,  
24 officer?

25 A. Yes, sir. This is a supplement that we write in



1 the homicide bureau. These would be notes of what took  
2 place, what time and the date. And this one is titled,  
3 "Sergeant W. L. Ashton, 0-0-7-7", which is myself, and  
4 "Sergeant R. F. Wilkinson, number 9-2-4-3" and it's titled  
5 "Interview Michael Rimmer 3-06-97". And then, the next line  
6 down is "Thursday, 3-06-97".

7 Q. And how many pages is that document? How long is  
8 that document?

9 A. This particular supplement is one and a half pages  
10 long.

11 Q. One and a half typed-written pages long?

12 A. Yes, sir.

13 Q. Was that prepared by yourself, officer?

14 A. Yes, sir, I typed that.

15 Q. And it was made a part of your official record in  
16 this case?

17 A. It was made a part of the official record in this  
18 case; yes, sir.

19 Q. Now, so this first interview, according to your  
20 statement and refreshing your recollection, took place on  
21 March 6th, of 1997; is that correct?

22 A. Yes, sir.

23 Q. What time did y'all start the interview with Mr.  
24 Rimmer?

25 A. It indicates here at 17:00 hours, which would be

1 5:00 p.m. in the afternoon.

2 Q. Did y'all do anything by way of further  
3 investigation on this case from the early morning hours,  
4 until 5:00 p.m. in the afternoon?

5 A. Yes, sir, we did.

6 Q. Can you tell me what you did during that time?

7 A. A search warrant had been received for the car that  
8 Michael Rimmer was arrested in, in Indiana. And the Indiana  
9 authorities were there, their crime scene people and that car  
10 was inventoried and evidence was gathered from that car and  
11 that happened during the morning hours before this.

12 Q. Were you present when that evidence was gathered?

13 A. I was in the room.

14 Q. Were you present when the evidence was given from  
15 the car?

16 A. Yes, sir, I was in the room.

17 Q. What room was the car in?

18 A. They had, I guess for lack of a better explanation,  
19 it was like a bay where they could drive the car in, close  
20 the door behind it and it was sort of like a garage, maybe.  
21 And this is where they processed their evidence and gathered  
22 evidence.

23 Q. And who was gathering evidence from this vehicle?

24 A. There was a couple of Indiana officers that were  
25 there. And I want to say that the man who was in charge of

1 their crime unit was a Lieutenant Bill Baldwin, or a Sergeant  
2 Bill Baldwin. I believe that's his name. I can't recall.  
3 And then there was a criminalist there, but I can't remember  
4 his name.

5 Q. Did any Memphis officers participate in the  
6 gathering of evidence from this vehicle?

7 A. Sergeant Shemwell, the case coordinator was in  
8 there and he was making notes as they was gathering evidence.

9 Q. And you were present also, when this was going on?

10 A. I was in the room and maybe I would walk out and  
11 come back in. I wasn't part of the people, actually  
12 gathering the evidence, myself, but I was there part of the  
13 time.

14 Q. Were you there when a piece of the seat was cut out  
15 for evidence purposes?

16 A. Yes, sir.

17 Q. What color was this vehicle?

18 A. The best of my recollection it was maroon colored.

19 Q. What was the color of the interior?

20 A. I don't recall. I didn't get in the car and cut  
21 the seat. I don't recall.

22 Q. Do you remember looking in there?

23 A. I looked at the car, but to say that I can remember  
24 the color of the seat, I couldn't do that.

25 Q. You just don't remember the color?

1 A. I can't tell you the color of the coat I had on  
2 yesterday.

3 Q. But, you were present when this sample was cut out  
4 of the seat, I believe you said; is that right?

5 A. Yes, sir, I was.

6 Q. What happened to that seat?

7 A. You'd have to look in the record to see that. I  
8 wasn't in charge of keeping the evidence, sir.

9 Q. Do I take that to mean that you don't know what  
10 happened to the seat?

11 A. I'm not the case coordinator, sir. I'm testifying  
12 on what I did in that case and not what someone else did.

13 Q. I don't mean to drag this out. Do you know what  
14 happened to the seat?

15 A. Not without looking at the case and you know  
16 reviewing what went on. I'm sure at one time I knew, but  
17 this was back in 1997 and this was many, many homicides back.

18 Q. Let me get back to the interview y'all had with Mr.  
19 Rimmer. He's seated at the end of the table and you're  
20 explaining the seating arrangement. Who was it that  
21 interviewed him? Was all of y'all asking questions, or was  
22 one person in charge of this interview?

23 A. I wouldn't say anyone was really in charge of the  
24 interview. Sergeant Wilkinson asked him questions and I  
25 asked questions, also.

1 Q. Well, did anybody serve as a secretary of this  
2 group? Was anybody taking notes? Did you write those  
3 questions down? Did you write your answers down?

4 A. That's what this is, sir.

5 Q. Did you do that at the time it was being done, the  
6 interview was being done, or is that a summary of this  
7 interview after the interview was over?

8 A. I hand wrote little notes to refresh my memory and  
9 when I got back here to Memphis and had access to my  
10 computer, I reduced those notes to this supplement, sir.

11 Q. So when did you get back to Memphis and prepare  
12 that report?

13 A. I can't recall what day we flew back to Memphis,  
14 but shortly after I got back to Memphis, I put this on paper.

15 Q. Several days after the interview?

16 A. What's your definition of "several days", sir?

17 Q. Well, I don't know what definition to use. I'm  
18 just trying to establish --

19 THE COURT: Hold on, just a minute now. You're  
20 using a term "several days". This witness is asking you,  
21 what is your understanding of "several days", and you're  
22 walking away from him. Please?

23 MR. GARRETT: Two days.

24 THE COURT: There you go, thank you.

25 A. Two to three days, would be fair.

MR. GARRETT: Thank you, Judge.

THE COURT: Yes, sir.

Q. What happened to those notes that you took during the interview?

A. After this is typed up I don't keep those notes any longer, they're destroyed.

Q. Is that department policy, too, that you destroyed your notes once you write up your report?

A. I don't have any place to store notes. And if you had that note in front of you, it wouldn't mean anything to you, because I write just things to refresh my memory. And I have no place to store it, so this is it. This is the culmination of those notes.

Q. I believe that your testimony was that Mr. Rimmer said -- what did Mr. Rimmer say about Ms. Ricci? About her body, something of that nature?

A. I don't know what you're asking me, sir.

Q. What was Mr. Rimmer's response when you told him that she was missing?

A. Okay. According to my supplement here, Sergeant Wilkinson told Michael Rimmer that Ricci was missing. Michael Rimmer tried to make light of what was said by telling the investigators that Ricci probably went home to her mother's home in Alabama. Michael Rimmer continued to deny any knowledge of Ricci's whereabouts. Sergeant

1 Wilkinson told Michael Rimmer that we feel that Ricci is  
2 dead. Michael told the investigators that Ricci cannot be  
3 dead because they do not have the body.

4 Q. Why do you say in your report that, "he tried to  
5 make light", by saying that she went home to Alabama? What  
6 does that mean?

7 A. Just what I said in my report, "he made light of  
8 it". Like there was nothing to it.

9 Q. Did you find him saying that she went home to  
10 Alabama, as that being unusual, there's something strange  
11 about that?

12 A. In looking at the investigation, yes, I would think  
13 so, because we feel that he's responsible for this homicide  
14 and he's just making light, "Oh, she's just gone home to  
15 Alabama".

16 Q. But, that's because you think he's responsible for  
17 it, that you say today, that that's making light of this?

18 A. I'm in Franklin, Indiana interviewing him, because  
19 we have a feeling that he is involved in this, yes, sir.

20 Q. I see. And your further comment was --

21 THE COURT: Could counsel approach the bench? I  
22 apologize, but I've got to talk to you.

23 (A bench conference was held on the record  
24 in the presence of the jury, but out of it's  
25 hearing and the following proceedings were

had, to-wit:)

THE COURT: One of our jurors needs a recess.

(Said bench conference having been completed,  
the following proceedings were had in the presence  
of the jury:)

THE COURT: We'll give y'all just a short break.

Don't discuss the case amongst yourselves, or allow anyone to  
discuss it with you.

(A recess was had, after which time the  
following proceedings were had in the  
presence of the jury:)

THE COURT: The defendant's present. Witness  
resume the stand.

(Witness complied).

Do you remember where you were?

MR. GARRETT: Yes, sir.

THE COURT: All right. You may continue, sir.

MR. GARRETT: Thank you, Your Honor.

(Continued Cross-examination):

Q. Sergeant Ashton, I think just before we left I was  
asking you about a comment that Mr. Rimmer allegedly made  
regarding Ricci not being dead because you didn't have a  
body, or words to that affect; is that correct?

A. Yes, sir.

Q. What was the date of that statement?



1 A. This was Thursday, March the 6th, 1997.

2 Q. And how long had Ms. Ricci been missing?

3 A. I don't recall off the top of my head. That's  
4 contained in the state's case there.

5 Q. Does February the 7th, or February the 8th sound  
6 about right?

7 A. Sir, without reviewing the case, I couldn't give  
8 you a specific date on that.

9 Q. You know that it was several weeks, though, don't  
10 you?

11 A. To the best of my recollection it was.

12 Q. You knew that there had been newspaper articles,  
13 after newspaper articles, regarding her disappearance; didn't  
14 you?

15 A. I'm not familiar with how many articles, no, sir.

16 Q. Did you check to see whether the articles were  
17 saying that they were looking for her, she disappeared and  
18 they didn't know where the body was, or they didn't know  
19 where she was?

20 A. I don't normally read the newspaper, sir, so I  
21 couldn't say.

22 Q. Would it surprise you, though, that that had been  
23 published in the papers every day, or every few days; would  
24 it?

25 MR. HENDERSON: Objection, Your Honor. Whether or

1 not he's surprised, or not, is totally irrelevant to this  
2 jury.

3 MR. GARRETT: I'll withdraw the question.

4 THE COURT: Thank you. You can't consider the  
5 question, can't even give an answer. Go ahead.

6 Q. You don't know what was said in the media about  
7 this case between the time that this incident actually  
8 happened and the time that you interviewed Mr. Rimmer; do  
9 you?

10 A. Sir, let me explain. I was not the case  
11 coordinator on this. The job of a case coordinator is to  
12 have other investigators, such as myself, working for him.  
13 And him give me an assignment to go do a specific thing. I  
14 go and do that one thing. I'm not the keeper of the record  
15 in the case. I don't know every aspect of the case. That's  
16 the job of the case coordinator. And along with working with  
17 this, I may be working on four, or five other cases at the  
18 same time. And so for me to be able to keep up with every  
19 aspect of this case, I wouldn't be able to do that, because I  
20 am not the case coordinator, sir.

21 Q. Sergeant Ashton, aren't you telling the jury that  
22 Mr. Rimmer said that, "She can't be dead, because you don't  
23 have a body", because you want them to believe that he knew  
24 something that he wasn't suppose to know? Wasn't that the  
25 reason for that.

1 MR. HENDERSON: Objection, Your Honor. The reason  
2 he said that is, because he was asked the question. If he  
3 wants to ask me questions, you better believe, I'll get on  
4 the stand. It's not up to this officer to decide whether or  
5 not to answer the questions.

6 THE COURT: Is that an objection?

7 MR. HENDERSON: Yes, Your Honor.

8 THE COURT: Do you want to respond, sir?

9 MR. GARRETT: No, sir, I'll move on, sir.

10 THE COURT: Can't consider any of that.

11 Q. Sergeant Ashton, you indicated that Mr. Rimmer,  
12 when asked about his leaving Memphis said it was his nature  
13 to get up and leave like that; is that correct?

14 A. Let me review this and see how he said that.

15 (A brief pause was had in the proceedings).

16 On the second page of my supplement the  
17 investigators asked Michael Rimmer, why he left town,  
18 suddenly. Michael Rimmer told the investigators that it was  
19 his nature to just get up and leave. Michael Rimmer told the  
20 investigators that he had just been in Memphis, too long.

21 Q. Do you know, Sergeant Ashton, how long Michael  
22 Rimmer had been out of prison?

23 A. I can't give you a specific time, but it seems like  
24 it had probably been a couple of months, or several months.

25 Q. Do you know how long he had been in prison?

1 A. I don't have that information in front of me, but I  
2 believe I heard that he was there for, like, eight or ten  
3 years.

4 Q. Did you check to see whether he was correct when he  
5 said that it was his nature to get up and leave like that?  
6 That he wants to travel.

7 A. Who would I ask that? Michael Rimmer was the one  
8 who told me. Who better than him would know that?

9 Q. Did you try to find out from any other source as to  
10 whether he had been traveling before, been leaving Memphis on  
11 the spur of the moment, before? Had been out of state  
12 before? Did you check on that, at all?

13 A. No, sir.

14 Q. So it may have been his nature to get up and leave  
15 like that; right?

16 A. Well, I thought it was strange, because during the  
17 investigation I went to the last place that he was employed,  
18 as a body repair person. And he left in such a hurry that he  
19 left all of his tools. And it's been my understanding,  
20 having worked around mechanics before, in previous jobs, that  
21 those tools are precious. You don't even want to lend them  
22 somebody. But, he got up and left and didn't even take his  
23 tools. Didn't tell his employer that he wasn't coming back.

24 I went down to his sister's house, the room that he  
25 was occupying down there, his clothing and stuff was in a

1 nice folded pile beside the bed. So yes, I thought that was  
2 kind of strange.

3 Q. Did you check to see what kind of a relationship  
4 did he have with his employer? How long he had worked there?

5 A. I remember speaking to the employer. I don't  
6 recall off of the top of my head how long he had been  
7 employed there. But, the employer indicated that he was a  
8 good employee.

9 Q. Did you check his attendance record with that  
10 employer to see whether he had missed time before from work?

11 A. I'm sure that came out in our conversation, but off  
12 the top of my head, I can't recall what he said.

13 Q. So you don't know that he hadn't on previous  
14 occasions got up and left and came back to that same job; do  
15 you?

16 A. The employer did not indicate that, no, sir.

17 Q. Did you ask him?

18 A. I didn't ask him that specific question.

19 Q. Any reason for you to believe that however long Mr.  
20 Rimmer was gone that he could have come back to that employer  
21 and get his tools?

22 A. I don't follow your question?

23 Q. You told this jury that on the second day of this  
24 interview that he acted, what was the term that you used?  
25 How did you describe Mr. Rimmer's conduct?

1 A. I don't know the word I used in the record, sir.

2 Q. Could you tell us how he acted the second  
3 interview?

4 A. Yes, sir. From my supplement, dated 3-07-97,  
5 Friday, at 09:30 hours. Sergeants Ashton and Wilkinson began  
6 the interview with Michael Rimmer. Michael Rimmer was very  
7 hostile towards the investigators. Michael Rimmer told the  
8 investigators that he spoke with his father and learned that  
9 his sister was being committed to Lakeside Hospital, because  
10 we were investigating him. Michael Rimmer took issue with  
11 the investigators for interviewing his brother, Richard  
12 Rimmer on this case. Michael told the investigators that his  
13 father told him not to talk to the police, because they were,  
14 "fucking liars".

15 Q. So Mr. Rimmer had been in touch with people in  
16 Memphis, during the time that he had been gone; right?

17 A. I don't know, sir. He indicated in this statement  
18 that he had spoken to people back in Memphis the night,  
19 previous, on that Thursday night.

20 Q. So based on those conversations he could have known  
21 about the news reports regarding Ms. Ricci's disappearance?

22 A. I can't testify on what he might have known, sir.

23 Q. Weren't y'all there accusing Mr. Rimmer of murder  
24 or having something to do with this lady's disappearance?

25 A. We were investigating the homicide and

disappearance of Ricci Ellsworth; yes, sir.

Q. Did you tell him that you thought had had something to do with it, or that he knew something about it?

A. I believe with our appearance there and asking him about the case, there was a pretty good indication of that.

Q. Did it strike you as strange that he would act agitated when he is being accused of murder?

A. He didn't act agitated on Thursday, after being accused. He tried to act in amazement. The next day, after he had spoken with his father at home, that is when he was agitated and hostile towards us.

Q. Do you know for a fact that it was that evening in between those two interviews that he spoke to his father?

A. I wasn't with him, I don't know when he spoke to his father, sir.

Q. Well, didn't you just say, "the next day after he had spoken to his father at home", wasn't that your statement?

A. That's what he indicated, you know, in here when he said that his father told him not to talk to the police.

Q. Did he say when he had talked to his father?

A. I don't have that written down here.

Q. Throughout this entire interview process Mr. Rimmer denied any knowledge of any involvement in this incident that resulted in Ms. Ricci's disappearance and any knowledge of

1 it; didn't he?

2 A. Yes, sir, he did.

3 Q. Thank you.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MS. JONES:

7 Q. Sergeant Ashton, you testified that you're not the  
8 keeper of the record in this case, but you made an accurate  
9 record of this interview?

10 A. I made an accurate record of everything that I did  
11 in this case. If I, like in this, I did this interview and I  
12 made a record of that. When I went and talked to his  
13 employer, I made a record of that. Everything that I did I  
14 made records of it and then that is given to the case  
15 coordinator who has other investigators working for him. He  
16 takes all this together, he compiles it, he keeps it, he's  
17 the keeper of the record. He's the one that knows everything  
18 that's going on about this case. I only know the stuff  
19 that's happening that I have a part in this case. Because,  
20 like I said earlier, I'll be working on several other cases  
21 at the same time that I'm working on this. And I'll also  
22 have my own case that I'll be working.

23 Q. On March 6th of 1997 and March 7th of 1997, you  
24 were present during the entire interview session?

25 A. Yes, ma'am.



1 Q. Did you take notes during the entire session?

2 A. Yes, ma'am, I did.

3 Q. Do you bring those notes back to Memphis?

4 A. Yes and they are reduced to this supplement right  
5 here, yes, ma'am.

6 Q. So that supplement that you've been reading from is  
7 a record of that interview?

8 A. Yes, ma'am, it is.

9 Q. And you made that record pursuant to the time that  
10 your interviewed occurred?

11 A. Yes, ma'am.

12 Q. From your handwritten notes that you took during  
13 the interview?

14 A. Yes, ma'am.

15 Q. And you put them on the computer close to the time  
16 that you returned to Memphis?

17 A. Yes, ma'am.

18 Q. Now, during this interview you were there to get a  
19 statement from the defendant to find out what he had to say;  
20 is that why you were there?

21 A. I would have loved to have gotten a statement from  
22 him, if he would have given us a statement, but he refused to  
23 give a written statement to us.

24 Q. Now, according to your notes on the March 6th, 1997  
25 interview, what day was the interview?

1 A. March the 6th of 1997, according to my supplement  
2 was a Thursday.

3 Q. And anywhere, from your notes on that date, did  
4 Michael Rimmer indicate to you that he had spoken with his  
5 father on that day?

6 A. No, ma'am.

7 Q. March the 7th of 1997, what day of the week is  
8 that?

9 A. According to my supplement, that would have been a  
10 Friday.

11 Q. So he indicated on that day that he had spoken with  
12 his father?

13 A. Yes, ma'am.

14 Q. Now, what day did he tell you that Ricci cannot be  
15 dead, because they do not have a body? Was that that Friday,  
16 or was that that Thursday?

17 A. That was on Thursday.

18 MS. JONES: I have nothing further.

19 THE COURT: Any recross?

20 MR. GARRETT: One moment, Your Honor.

21 (A brief pause was had in the proceedings).

22 No further questions, Judge.

23 THE COURT: Thank you, sir, you may step down.  
24 You're free to go about your business.

25 (Witness excused).

1 Call your next witness.

2 MR. HENDERSON: I'd call Lieutenant Shemwell.

3 ROBERT SHEMWELL was called, sworn, examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HENDERSON:

7 Q. Would you tell us your full name, please?

8 A. Lieutenant Robert Shemwell.

9 Q. You're obviously employed by the Memphis Police  
10 Department; is that correct?

11 A. That's correct.

12 Q. And how long have you been with the Memphis Police  
13 Department, all together?

14 THE COURT: Give us the spelling of that last name?

15 Q. Spell that last name for us?

16 A. S-H-E-M-W-E-L-L.

17 Q. How long have you been with the Memphis Police  
18 Department?

19 A. Twenty years in July.

20 Q. Where are you assigned right now?

21 A. West precinct, Charlie shift.

22 Q. What's a "Charlie shift"?

23 A. 2:00 in the evening until 10:00 at night.

24 Q. Did you work 2:00 to 10:00 last night?

25 A. Yes, sir, I actually I worked a little later than

that.

Q. How long have you been a Lieutenant with the Memphis Police Department?

A. Since May 23 of 2002.

Q. And back in February of 1997 where were you working with the Memphis Police Department?

A. Homicide.

Q. How long were you in homicide before you were promoted to Lieutenant?

A. Almost seven years.

Q. Now, specifically on February the 8th of 1997 in the early hours, were you called to the scene out at the Memphis Inn, in Memphis, Tennessee?

A. Yes, sir.

Q. That is located here in Memphis, Shelby County, Tennessee; is that correct?

A. That's correct, it is.

Q. Would you tell the ladies and gentlemen of the jury what you found when you got there?

A. Yes. When I arrived I was met by night detectives. Dana Stines, Sergeant, who had previously made the scene and determined that we needed to be called out. I was on the homicide call out team. Myself and Sergeant O. W. Stewart. I lived not too far from that location, so I made it pretty quick. I was there, probably, twenty or twenty-five minutes

1 after the call. It was the early morning hours, raining.  
2 When I arrived I spoke with Detective Stines, as well as the  
3 crime scene officer, Captain Moore, was already there. And  
4 they started pointing out evidence to me that was on the  
5 sidewalk outside.

6 Right when you come in, where the Memphis Inn is  
7 located, the front actually faces Macon Cove, however, the  
8 night entrance is on the west side and that's where the  
9 parking lot is. And just outside the night entrance door was  
10 Ms. Ellsworth's vehicle and immediately to the right of it on  
11 the sidewalk there was blood droplets leading back into the  
12 night entrance area, on the kick plate of the night entrance  
13 area, going onto the carpet. You walk into a little lobby  
14 area, there's a bath room to your left, vending machines in  
15 front of you and to your right, you turn to your right there  
16 is a door that leads into the office area itself. It has a  
17 key pad lock on it that's supposed to be secured at night.

18 Just to the left of that is a window that the  
19 clerk can work out of and it has a little slide under there  
20 where you can do money transactions and key transactions  
21 there.

22 On the door, or jam of the door plate and on the  
23 key pad lock, there was blood. It appeared that it was  
24 running down the frame there at the door, going into the  
25 lobby area. There was blood in and around the counter top

1 area on some documentations, some paperwork that were on the  
2 counter, as well as a clip board.

3 Behind the cash register, work area, there was  
4 blood back there and it led back into an office area in the  
5 back. We got back there and there was blood there, as well.  
6 There was a close hanger that was right at the door way that  
7 had one of the white paper linings on it and there was blood  
8 droplets, I remember, being there.

9 There was a ring that was there on the floor  
10 leading into the bath room area that's off of that office  
11 area there in the back. And when we got back there, that's  
12 where the majority of the blood was.

13 Q. And did you become the case officer for that case,  
14 that particular night?

15 A. It was early morning. It was about 5:20 something  
16 when I got the call. I got there just before 6:00 o'clock.  
17 What we do in homicide, I'm on the call out team. Captain  
18 Houston, at that time, was the one that placed the call to  
19 me. He was supervising that day. I was notified, I guess,  
20 half-way into that morning that I was going to be actually  
21 assigned as case officer, since I had most knowledge of what  
22 was going on.

23 Q. At least that day, you became the case coordinator  
24 as you call it; is that correct?

25 A. Yes, sir.

1 Q. For the sake of the jury, is a case coordinator,  
2 does that mean, like on TV, that you do everything in the  
3 case?

4 A. No. The case coordinator with homicide, the way we  
5 work it is, the case coordinator, at times -- and it is best  
6 that you go to the scene, but there's a lot of times that you  
7 don't. You are responsible for all information regarding  
8 that case, compiling all of the information and all the  
9 evidence, viewing everything regarding that particular case,  
10 making decisions in what direction to go and who to talk to  
11 and after the information is all gathered, you're the one  
12 that's responsible to talk to the Attorney General and  
13 present the case for them to determine the charges.

14 Q. Does that mean that the case coordinator always go  
15 out and interview every single witness then?

16 A. No. No very seldom does the case coordinator,  
17 especially in a case involving this many people, it's not  
18 feasible to do that. We work as a team in homicide. And  
19 what a case officer does is, he assigns duties to other  
20 investigators and usually it's two officers at one time.  
21 That way, you always have someone there who's taking the  
22 notes and the other one interviewing them. And sometimes  
23 when you're doing the talking you might miss something that  
24 someone else is saying. Therefore, the other person is there  
25 to ask that question.

Q. And if you are the case coordinator, are you the case coordinator in every case then?

A. No.

Q. You might be the case coordinator in this case and at the same time working for another one of the detectives who is a case coordinator in another case; is that right?

A. In homicide, that happens daily.

Q. So you don't just do one homicide at a time, like on TV?

A. No. But, on this particular case, it's a very long, drawn-out case and we dedicated a lot of time on this one.

Q. While you were working on this case, did you get any other homicides to work?

A. Yes.

Q. And the people that you were supervising also got other homicides to work, too?

A. That is correct.

Q. All right. Let's go back to this particular crime scene. Was anything done to see whether or not anybody in the rooms there at the hotel did anything?

A. Yes. There at the time when I arrived the officers were already questioning anyone that was there, that was attempting to leave, check out. We actually set up in the office, I think, as a vacant room next door for those



1 transactions to find out who was there. Of course, we had  
2 all of the cards of everyone that was supposed to be there,  
3 with their information, driver's license, or any information  
4 that the desk clerk took that night, or the previous night.

5 Also, when Sergeant Stewart got there he began a  
6 room to room search to find out if anyone had checked in  
7 during this time and who was there and if anybody had seen,  
8 or heard anything at all during the night.

9 Q. Did you tell the crime scene what evidence you  
10 wanted collected and what you wanted them to do when you were  
11 at the scene?

12 A. Yes. They had actually already started processing  
13 the scene, prior to me arriving. Nothing was actually  
14 collected until we get there and everything is on halt, other  
15 than them photographing everything. And they basically were  
16 the ones who were pointing out evidence to me as we were  
17 going from room to room. But, they were the ones who were  
18 actually collecting evidence.

19 Q. While you were out there was the victim's husband,  
20 Mr. Donnie Ellsworth, did he arrive out there at the scene?

21 A. He had arrived and left with a night investigator,  
22 prior to my arrival. And I was informed that he was there  
23 and was cooperating with the night detectives and that they  
24 were going to his residence to retrieve some possible  
25 information and provide assistance in the investigation.

1 Q. So by the time you got there he was already helping  
2 the officers try to locate a suspect?

3 A. Yes.

4 Q. Did you get the name of that suspect from any other  
5 officers that they presented to be the source?

6 A. Yes, I did.

7 Q. And what was the name of that suspect?

8 A. Michael Rimmer.

9 Q. In the course of the investigation did you take  
10 steps to have people look for Mr. Michael Rimmer?

11 A. Immediately.

12 Q. Did you take steps to have people look for Ricci  
13 Ellsworth, dead, or alive?

14 A. Yes.

15 Q. And over a period of months there, what kind of  
16 efforts did you all take in order to try to locate Ricci  
17 Ellsworth, dead or alive?

18 A. That night, or that afternoon that the information  
19 was compiled. I was at the hotel for quite a long time. It  
20 was such a bad scene. I documented it. It was my job, I was  
21 the scene investigator. I had to document everything. When  
22 I got back I briefed my supervisors and it was at that time -  
23 - it took us a little while to obtain photographs of Ricci  
24 that we could release to the media with information, if  
25 anybody had any information regarding the incident, itself,

1 or the whereabouts of Ricci Ellsworth. That was released to  
2 the newspaper, all the TV stations. Flyers were distributed  
3 by the family of Ricci Ellsworth. Of course, all the  
4 information was given out to all uniformed patrol officers in  
5 the county.

6 Q. Did you take steps to notify law enforcement  
7 agencies in other jurisdictions that you were looking for  
8 Ricci Ellsworth?

9 A. Yes, we entered an N. C. I. C.

10 Q. What is "N. C. I. C."?

11 A. It's National Crime Information Center, a network,  
12 it's a national computer system that we set up through the F.  
13 B. I. You put information into whatever you're looking for,  
14 into it, and requested that if anybody comes in contact with  
15 a certain individual, or whatever you're looking for, to  
16 notify this police department, immediately. And we have to  
17 respond immediately and that's handled through our  
18 dispatcher's office.

19 Q. So if Ricci had picked up a traffic ticket in San  
20 Diego, California next week and they check the N. C. I. C.,  
21 they would have known to notify you all; is that correct?

22 A. That's correct.

23 Q. Now the suspect, Michael Rimmer, was his name put  
24 on the N. C. I. C.?

25 A. Eventually, with the vehicle information that we

1 had that he was possibly in possession of.

2 Q. And did you get some information concerning what  
3 the description of the vehicle was that he might be  
4 operating?

5 A. Yes, we did.

6 Q. And that went into the N. C. I. C. as well?

7 A. That's correct.

8 Q. Prior to Mr. Rimmer's arrest did you get any leads  
9 to check out, as detective in this case?

10 A. Numerous leads.

11 Q. Could you give us any estimates, or a ball park  
12 figure, how many leads y'all tried to track down?

13 A. We had a composite drawing obtained from an  
14 individual who was there that night and saw a man behind the  
15 check out counter, which we knew was not supposed to be  
16 there. We distributed that flyer and after that was  
17 distributed in the newspaper and the media, we started  
18 receiving calls from anybody that looked like him. And we  
19 did our best to attempt to locate any photographs, arrest  
20 histories of those individuals, whether they were local, or  
21 out of town. We would notify those police departments, or  
22 penal facilities, or anything, to locate photographs to put  
23 in a photo spread. And I think that I accumulated something  
24 like, I want to say, fifty-something photographs, a total of  
25 different people.

1 Q. Did you get any tips, or leads on where Ricci  
2 Ellsworth might be, either dead, or alive?

3 A. Yes.

4 Q. And did y'all check those out?

5 A. That's correct. We had one information from a lady  
6 that thought she might had seen her alive several days after  
7 the incident, in a certain area. I notified that particular  
8 precinct and distributed photographs of her, again, and the  
9 information. As well as, we received several people that  
10 called in to give us information where she might be buried.

11 Q. Did you ever get any calls from psychics to tell  
12 you where she was?

13 A. I did get calls from people that called to ask if  
14 we needed their assistance. I don't recall talking to any of  
15 these individuals, at any length, or period.

16 Q. You didn't consult a psychic, I take it?

17 A. No.

18 Q. Did you conduct searches of some property belonging  
19 to, or at least, occupied by Mr. Rimmer's brother down in  
20 Mississippi?

21 A. Yes, I did.

22 Q. Did you coordinate the other people to do the  
23 interview, or go down there yourself?

24 A. I went down there myself, along with search and  
25 rescue units from Shelby County, as well as Desoto County.

1 Q. Did you participate in the search of the Arkabutla  
2 area?

3 A. Numerous times.

4 Q. The ring, I believe that you said that there was a  
5 ring found at the hotel at the scene; is that correct?

6 A. Yes, it was identified by Donnie Ellsworth as his  
7 wife's ring.

8 Q. And what did you eventually do with that?

9 A. I eventually released it, with other property, to  
10 Donnie Ellsworth.

11 Q. Now, in March of 1997, March the 6th, did you go to  
12 Franklin, Indiana, up in Johnson County?

13 A. Yes, I did, Franklin, Indiana.

14 Q. And who all went up there with you?

15 A. Myself, Sergeant Wilkinson and Sergeant Ashton.

16 Q. When you got up there did you see the automobile  
17 that the defendant had been arrested in?

18 A. Yes, I did.

19 Q. Did you assist in the search of that automobile up  
20 there?

21 A. Yes, I did.

22 Q. Well actually, the Indiana authorities got the  
23 search warrant; is that correct?

24 A. That's correct. And they actually did the actual  
25 search. We stood by with them while they did it.

1 Q. And do you know what happened to that car after  
2 they got through searching it?

3 A. Yes, we wrapped it up in a hundred foot tarp,  
4 loaded it on a flat bed and it was brought down to Memphis.  
5 Sergeant Helldorfer, the vehicle was released to him, at our  
6 crime scene office.

7 Q. Now, did you interview the defendant up there in  
8 Franklin, Indiana?

9 A. I didn't personally, I had Sergeant Wilkinson and  
10 Sergeant Ashton talk to him.

11 Q. Did you also pick up personal property of the  
12 defendant's from the Johnson County Sheriff's Department?

13 A. Yes, I did.

14 Q. And sent those items to the Tennessee Bureau of  
15 Investigation; is that correct?

16 A. Some of them, that's correct.

17 Q. Did you at some point get access to a letter that  
18 a Mr. Conaley had written to the T. B. I.?

19 A. Yes.

20 Q. And as a result of getting that letter, what did  
21 you do?

22 A. Instructed two investigators to go to the prison to  
23 talk to Mr. Conaley.

24 Q. And did they report to you after they interviewed  
25 this witness?

1 A. That's correct. I want to say that they took a  
2 handwritten statement from him, because he was actually in  
3 the facility.

4 Q. Were you also present when Ms. Marjorie Floyd, the  
5 mother of the victim in this case, had a blood sample drew,  
6 for the purposes of DNA?

7 A. Yes. I arranged that meeting with our sexual  
8 resource center and actually transported her down there.

9 Q. And when the dried sample was prepared, it was  
10 turned over to you, sealed?

11 A. That's correct.

12 Q. What did you do with it?

13 A. I tagged it in our property room and then checked  
14 it back out and when it was time to send it to the lab to be  
15 tested against other items that we had.

16 Q. The paper documents that you got from the  
17 defendant's car, the car that he was operating up there, did  
18 you get hotel receipts, pawn tickets and that sort of thing  
19 out of the car?

20 A. Yes, I did.

21 Q. Did they have locations on them?

22 A. Yes, they did.

23 Q. Did you try to figure out where those locations  
24 were and what the dates were?

25 A. It was pretty easy. He kept up with just about



1 every where that he went. Had the dates, especially on the  
2 hotel receipts of when he checked in and when he checked out.  
3 How many were in the room. The vehicle he was driving. You  
4 could tell which hotel that he gave the information, I guess,  
5 which hotel that they verified the information, because it  
6 was not correct at all times, but it was similar.

7 Q. What type of car did he indicate he was operating  
8 during this time?

9 A. A Honda Accord.

10 Q. The same one that y'all found him in up in Indiana?

11 A. That's correct. And he used the same tag number  
12 several times.

13 Q. The same tag number was on the car when he was  
14 arrested?

15 A. That's correct.

16 Q. Did you ever sit down and look at a map and try to  
17 figure out where he went and when he went there?

18 A. Yes, I did.

19 Q. I'll hand you this item and ask you to take a look  
20 at it.

21 (Document tendered to witness).

22 Does that map indicate the dates and places where  
23 you were able to verify, or where the records indicated that  
24 the defendant was on those dates?

25 A. To the best of my knowledge, yes.

1 Q. And what were the dates? If I could, before I show  
2 this, could you just explain to us, starting with the first  
3 date on there, the path taken, according to the records found  
4 in the defendant's car?

5 A. Okay. On 2/8/97, which was the actual date of  
6 occurrence -- and if I'm not mistaken, the actual time of  
7 this is in Myrtle, Mississippi, but the actual time was later  
8 on that evening, it's dated 2/8/97.

9 The next is dated next down in -- I'm going to  
10 spell the name of this city -- it's M-I-C-A-N-O-P-Y, Florida.

11 Q. Micanopy?

12 A. Right. And that's the way I'm pronouncing it. And  
13 it's on 2/13/97. And he went trailing back up northwest to  
14 Greenvalley, Missouri, 2/15/97. And to Casper, Wyoming,  
15 2/17/97. And to Mesoula, Montana -- there's two dates there,  
16 2/17/97 and 2/18/97. Then he went southwest into Vacaville,  
17 California, 2/25/97. And to San Francisco, California,  
18 2/26/97. And then he went along the Mexican border to  
19 Blythe, California, 2/28/97. And he went back east to Casa  
20 Grande, Arizona, 3/1/97. And 3/3/97 he's in Bernando, Texas.  
21 And then he went back northeast, 3/5/97 where he was arrested  
22 in Franklin, Indiana.

23 Q. And Mesoula, Montana, that's in two different  
24 motels he stayed in on two different nights; is that right?

25 A. That's correct.

1 MR. HENDERSON: Your Honor, I'd ask that be marked  
2 as state's exhibit number thirty-one.

3 MR. GARRETT: No objection, Your Honor.

4 THE COURT: Mark it as exhibit number thirty-one  
5 into evidence, testimony of Lieutenant Shemwell.

6 (Exhibit number thirty-one was marked and filed for  
7 record as evidence.)

8 MR. HENDERSON: With the Court's permission, may I  
9 publish this to the jury on the overhead?

10 THE COURT: Yeah.

11 Q. Again, this is not for design to show highways,  
12 it's not a straight highway between these points; is that  
13 correct?

14 A. That's correct.

15 Q. And the time scale, for instance, from Mesoula,  
16 Montana, last date was February the 18th and the next date is  
17 February the 25th in California; is that correct?

18 A. That's correct.

19 Q. So we just don't have any records to indicate where  
20 he was between those two; is that correct?

21 A. That's correct.

22 Q. We're not trying to say that he took a week to  
23 travel that far; are we?

24 A. No.

25 MR. HENDERSON: No further questions of this

1 witness, Your Honor.

2 THE COURT: You may cross-examine.

3 CROSS-EXAMINATION

4 BY MR. GARRETT:

5 Q. Lieutenant Shemwell, my name is Coleman Garrett and  
6 I need to ask you a few questions about your testimony and  
7 your involvement in this case. Was it your testimony that  
8 you all developed numerous suspects during the investigation  
9 of this disappearance of Ms. Ricci?

10 A. There were leads, yes, sir.

11 Q. Numerous leads. And as a part of those leads, I  
12 believe you said something about a composite drawing. Where  
13 did you get that lead from?

14 A. From an individual who attempted to check in that  
15 morning.

16 Q. Do you remember that individual's name?

17 A. James -- I remember him being a military man. He  
18 is extremely tall. I want to say he was stationed in Hawaii  
19 and he had to be at home on leave. I cannot recall his last  
20 name.

21 Q. Does Darnell sound correct?

22 A. That's correct, James Darnell.

23 Q. When did you talk to James Darnell?

24 A. He called one night about -- I want to say it was  
25 10:00 o'clock, or a little after 10:00 o'clock, we was about

1 to leave from work that night. And I want to say it was --  
2 this happened on the 8th -- I want to say it was a couple of  
3 days later, maybe on the 10th, or 11th. And he was about to  
4 leave to go back to Hawaii.

5 Q. Did you talk to Mr. Darnell, directly?

6 A. No, I did not. Sergeant's Bodding and Sergeant  
7 Wilkinson talked to him.

8 Q. Did you at any point talk to James Darnell during  
9 the investigation of this case?

10 A. On the telephone.

11 Q. What lead did you get from James Darnell?

12 MR. HENDERSON: Object, Your Honor, to the  
13 relevance. At this point he has already established that he  
14 had various leads. If he's going to ask for a hearsay, I  
15 object to hearsay.

16 THE COURT: Come on up.

17 (Whereupon, a bench conference was had on the record in  
18 the presence of the jury, but out of its hearing and the  
19 following proceedings were had:)

20 THE COURT: All right. We have an objection.

21 MR. SPRINGER: Yes, Your Honor. James Darnell is  
22 an individual who was the only eye witness that we saw from  
23 the list of witnesses that the officers testified. And he  
24 stated that he's also the only individual who described the  
25 bloody knuckles of the one who was behind the counter, the

1 one who was handling money. It goes directly to our residual  
2 doubt proof that the defense wants to put on. So I think  
3 that it's extremely relevant here. And I think, quite  
4 frankly, as State versus Teague lays out, the rules of  
5 evidence do not apply so long as the other side has the  
6 opportunity to rebut any evidence that goes to the  
7 circumstances of the residual doubt evidence.

8 MR. HENDERSON: First off, the case doesn't say  
9 that the rules of evidence don't apply to sentencing hearing.

10 THE COURT: But they do.

11 MR. HENDERSON: They are relaxed. And this is  
12 hearsay. And I'd say, I've tried to locate this witness and  
13 haven't been able to get him. I don't think we have any  
14 basis for being up here, whatsoever. It doesn't just mean  
15 that you no longer have to call witnesses, or subpoena  
16 witnesses to lay foundations. It's more relaxed.

17 MR. SPRINGER: Your Honor, if I could respectfully  
18 request that we excuse the jury and to have a jury out  
19 hearing on this matter.

20 THE COURT: Yeah, we'll do that.

21 (Said bench conference having been completed, the  
22 following proceedings were had in the presence of the  
23 jury:)

24 THE COURT: I have a matter that I have to attend  
25 to that's none of your business, yet. So you can step out of

1 the courtroom. Don't discuss the case among yourselves, or  
2 allow anyone to discuss it with you.

3 (Whereupon, the jury retired from open court and the  
4 following proceedings were had as follows:)

5 THE COURT: All right. The jury is not present.  
6 Let's take it from the objection on the record, so that we  
7 get a good clean record. The objection is, state?

8 MR. HENDERSON: The objection is he's attempting to  
9 introduce a hearsay statement of a witness who is not here,  
10 so that's substantive proof.

11 THE COURT: Response?

12 MR. SPRINGER: Your Honor, it's our position that  
13 this is a sentencing hearing and as outlined under the case  
14 law and the statute for the purpose of sentencing hearing --

15 THE COURT: And you cited a case?

16 MR. SPRINGER: At State versus Teague, Your Honor.  
17 The cite is 897 SW2nd, 248. It's a 1995 case, I believe,  
18 Your Honor. And my understanding, as I read Teague, and I  
19 will state that language that I think is pertinent here, Your  
20 Honor.

21 "In the sentencing proceeding evidence may be  
22 presented as to any matter that the Court deems relevant to  
23 the punishment, that may include, but is not limited in  
24 nature of the circumstances of the crime. The defendant's  
25 character, background history, physical condition, any

1 evidence tending to establish or rebut the aggravated  
2 circumstances enumerated in subsection (i), below, and any  
3 evidence tending to establish, or rebut any mitigating  
4 factors. Any such evidence which the Court deems to have  
5 probative value on the issue of punishment, may be received,  
6 regardless of it's admissibility under the rules of evidence,  
7 provided that the defendant --"

8 Because in this case the state was attempting to  
9 introduce it as evidence.

10 -- "is accorded a fair opportunity to rebut any  
11 hearsay statements so admitted".

12 So I would contend that State versus Teague stands  
13 with the proposition that hearsay evidence is admissible, so  
14 long as the state is given the opportunity to rebut any  
15 hearsay statements that may be introduced, pursuant to  
16 Lieutenant Shemwell's testimony.

17 THE COURT: And you're indicated that this witness  
18 that you're referring to would have done what?

19 MR. SPRINGER: This particular witness, Your Honor,  
20 as based upon the records, as we have reviewed them, is the  
21 sole eye witness that was listed on the investigation. And  
22 he stated, based upon his discussions with the police  
23 officers that he saw two individuals, both with blood on  
24 their knuckles. One who was handing money to another  
25 individual through a door, or window of some sort. And that



1 these individuals were there at around the same time that  
2 this crime was supposed to have been committed.

3 I think it goes directly to residual proof. And I  
4 think, quite frankly, it's extremely relevant. I would  
5 contend it goes directly to the heart, though, of the  
6 residual doubt proof.

7 Obviously, we're not here to discuss the guilt or  
8 innocence here, but I think residual doubt affords it. That  
9 the defendant has the right to put forth proof of actual  
10 innocence.

11 THE COURT: State?

12 MR. HENDERSON: May I suggest, rather than have  
13 counsel's statement, why don't we do an offer of proof and  
14 let him ask the questions of the officer, out of the hearing  
15 of the jury, so we really know what we're talking about. As  
16 opposed to just --

17 THE COURT: Yeah. Let's do that. Go ahead.

18 (CONTINUED CROSS-EXAMINATION BY MR. GARRETT:)

19 Q. Officer Shemwell, you indicated that you had  
20 contact with, or some of your investigators had contact with  
21 an individual by the name of James Darnell; is that correct?

22 A. Correct.

23 Q. What information, officer, did James Darnell  
24 provide to the police department?

25 MR. HENDERSON: I'm going to object to that, Your

1 Honor, I think that it's one thing for him to testify what  
2 somebody told him, now he's going to testify to what he told  
3 somebody else, who told him. Surely there's some limit to  
4 this, before we get down to just rumor.

5 MR. GARRETT: This is just an offer of proof.

6 THE COURT: I think it was the form of your  
7 question.

8 MR. HENDERSON: He needs to differentiate what he  
9 knows personally and which he was told by other officers.  
10 That might make it easier, is what I'm suggesting, Your  
11 Honor.

12 Q. What information do you have in your investigative  
13 reports regarding knowledge of James Darnell, in regards to  
14 this case?

15 THE COURT: Do you still have an objection?

16 MR. HENDERSON: Yes, Your Honor. I mean, that's  
17 like, "Tell us what you did in this case". Read your whole  
18 supplement of every lead you've ever had.

19 Q. Did Mr. Darnell provide the police department with  
20 any potential suspects in this case?

21 A. A description of suspects, yes.

22 Q. Would you tell us the descriptions that he provided  
23 you?

24 A. If you're asking me height and weight, I cannot  
25 recall. But I can advise that he gave two composite drawings

1 of two individuals that he saw at the time that he went in to  
2 obtain a room that night.

3 Q. Do you remember what time he said that this was?

4 A. I want to say, he said, around 2:15 in the morning.

5 Q. Did he say where these individuals were, exactly,  
6 that he saw?

7 A. Yes, sir. One was on the outside of the lobby  
8 area, where he was at. And the other was on the other side  
9 of the window, where the cashier would have been.

10 Q. And when you say, "where the cashier would have  
11 been", did he mean where Ms. Ricci Ellsworth would have been  
12 working?

13 A. Or any other employee would be.

14 Q. And did he tell you what he observed these  
15 individuals doing?

16 A. Yes, he advised that it appeared to him that the  
17 one on the inside was giving the one on the outside, that was  
18 in front of him, money and change. Dollar bills and change.

19 Q. Did he describe anything unusual about these  
20 individuals?

21 A. He believed that he saw blood from both of these  
22 individuals hands.

23 Q. Did he say where he saw the blood on them?

24 A. He described it as being around the knuckles.

25 Q. Did the composite drawings that you made reference

1 to, were these drawings made based upon the information  
2 provided by Mr. James Darnell?

3 A. That's correct.

4 Q. And you said that he gave you descriptions of these  
5 individuals?

6 A. Of both individuals.

7 Q. And can you tell us what he said in that regards?

8 A. I can't recall. I believe he said that the  
9 individual on the inside was about five seven, or five eight,  
10 medium build, brown hair. And I want to say that he said  
11 that he was wearing what he thought to be blue-jeans, I want  
12 to say a black shirt, maybe. And maybe a blue jacket. The  
13 individual on the outside was wearing a tee-shirt and he  
14 believed, I think if I'm not mistaken, that he said was  
15 ripped, or torn around the shoulders. He had a strawberry  
16 blondish, long, kind of unkept hair.

17 Q. Did he describe or tell you whether he was of the  
18 opinion, based on his observation, as to whether there had  
19 been an altercation in that area?

20 A. Yes. He gave the opinion that he thought that  
21 these two individuals might have had a confrontation with  
22 each other. He said that he didn't notice any other injuries  
23 to the individuals, just that he thought that there was blood  
24 on both of these individuals hands. And he thought that they  
25 might have gotten into an altercation and that the male clerk

1 was attempting to give the individual his money back over the  
2 room to make him leave.

3 Q. So when he said, "male clerk", it was his opinion  
4 that the individual that was in this area where Ms. Ricci  
5 Ellsworth worked, was a clerk?

6 A. In his opinion.

7 Q. That was his opinion?

8 A. That's correct.

9 Q. To your knowledge, Officer Shemwell, or Lieutenant  
10 Shemwell, was Jim Darnell shown any photographs of any  
11 potential suspects in this case?

12 A. I want to say that I shipped, or the F. B. I. sent  
13 photospreads that I had compiled. I want to say that there  
14 was something, like, fifty-something photographs, of  
15 individuals who were named and Michael Rimmer's picture was  
16 in that group of photographs.

17 Q. Was James Darnell shown these photographs, or this  
18 group of photographs that included Mr. Rimmer's photograph?

19 A. Yes, by the F. B. I. in Hawaii.

20 Q. And Mr. Darnell identified Michael Rimmer as the  
21 individual -- one of the individuals that he observed on the  
22 evening that this incident took place, as he had told you  
23 about?

24 A. He identified Michael Rimmer and another individual  
25 as someone that looked familiar to him. But, he did not

1 positively identify him as being the one that was behind, or  
2 in front of him at the hotel, no.

3 Q. Is that identification information included in your  
4 investigative report any place?

5 A. It should be. I believe it was sent back to us  
6 with a results from the F. B. I.

7 Q. Do you have those reports here today?

8 A. They should be in the file.

9 Q. And could you refer to those reports, sir, and tell  
10 us, specifically, what Mr. Darnell said with respect to that  
11 identification of Mr. Rimmer?

12 A. I didn't talk to Mr. Darnell, personally. I didn't  
13 talk to him but one time and that was on the phone, so.

14 Q. That information would be contained in the  
15 investigative report, though; right?

16 A. It should be.

17 MR. GARRETT: And Your Honor, I would request that  
18 the officer be given an opportunity to review his reports to  
19 see exactly what was said, regarding the identification of  
20 Mr. Rimmer?

21 THE COURT: Sure.

22 MR. HENDERSON: Your Honor, it won't be in "his"  
23 report, because he didn't talk to the witness.

24 THE COURT: He's the case --

25 MR. HENDERSON: He would have to review the entire

1 investigative file, which is a banker's box.

2 THE COURT: No. He's indicating that he wants to  
3 know what part of that file the witness made identifications,  
4 or comments about his client. Is that correct, sir?

5 MR. GARRETT: Yes, sir.

6 MR. HENDERSON: I have no objection with him  
7 reviewing the file. I don't know where it is, either. But,  
8 the file is -- part of it's on the cart, and part of it's  
9 here and the rest of it is in a banker's box in the office.

10 THE COURT: But, you would know where that part is?

11 MR. HENDERSON: I don't, no.

12 THE COURT: He would. Is that right?

13 A. I'd have to go through the whole thing, Your Honor.  
14 There was a conversation with me and I think, Stumpy  
15 Roberson, Sergeant Roberson was the one that handled that,  
16 Your Honor, with the F. B. I. and sent it out there. They  
17 were all Fed-Ex'd out to this individual, an F. B. I. agent  
18 in Hawaii.

19 THE COURT: Why don't we do this, I'm going to look  
20 at the Austin case, again, just a moment and see how far  
21 they're going to let me go with this. Is that all right?

22 MR. HENDERSON: I'll keep my objection, also, Your  
23 Honor, even if the Court allows the testimony in, I'd object  
24 to the portion that is the absent witnesses opinion. That  
25 wouldn't even be relevant if he were on the witness stand.

1 It wouldn't be admissible even if he were on the witness  
2 stand, where he gives an opinion as to what he thought might  
3 have happened. I don't think that becomes admissible, just  
4 because it's hearsay.

5 THE COURT: While I tend to agree with your  
6 statement, I want to see what Austin says. And so you get to  
7 step down. Take a recess.

8 (Witness temporarily excused).

9 MR. HENDERSON: Does Your Honor want him to go  
10 ahead and look through the file, during this recess? And if  
11 so, I was going to suggest, why don't we break for lunch to  
12 do that, since it's going to take him a good bit of time. If  
13 the Court wanted to do that at this point, or if you want to  
14 wait, whichever?

15 THE COURT: I just need to look at Austin. Give me  
16 five minutes and I'll tell you what we're going to do. How  
17 is that?

18 MR. HENDERSON: I'll be right here.

19 THE COURT: Beginning now. Take a recess.

20 (Whereupon, a recess was had, after which time the  
21 following proceedings were had out of the presence  
22 of the jury.)

23 MR. HENDERSON: Do we want the witness back up  
24 there, right now?

25 THE COURT: No. And the jury is not present.



1 Well, yeah, he does need to know what I'm going to have him  
2 look for.

3 (Witness resumed stand).

4 THE COURT: You're still under oath. Austin simply  
5 says that the trial Court erred by excluding mitigating  
6 evidence on the basis that it constituted hearsay. And then  
7 we go a little bit further. If relevant hearsay is  
8 admissible during the penalty phase of the resentencing  
9 hearing of a capital murder case, got to let it in.

10 However, I think it's important to the Court  
11 because I'm not clear -- I do remember this fellow -- I'm not  
12 clear as to what he said about the Rimmer photograph. It was  
13 sent to the witness in Hawaii. It was one of them?

14 A. Yes, via the F. B. I. All fifty-five of the  
15 photographs.

16 THE COURT: Whether it's a look a-like, or I saw  
17 him there, I don't recall. And I really need to know that.  
18 What I'm looking at is residual doubt proof, is to rebut  
19 aggravating circumstance that we've got. Since the state is  
20 using the felony murder aggravator, to-wit; robbery. And it  
21 could apply to show that the defendant didn't commit the  
22 robbery. Again, if it is allowed for anything, it would be  
23 that, nothing else.

24 But, I've got to know, before I rule -- and I'm  
25 going to send the jury to lunch until 2:00 o'clock. Let's

1 see how far we can get with it. And then, I'm going to need  
2 to know the answer to that, okay? You with me?

3 All right. We will leave the jury out for their  
4 lunch period right now and bring them back in at 2:00  
5 o'clock, if we can get far enough on the Court's question.

6 Let's take a recess. You assist the lawyers. And  
7 Mr. Rimmer, you have your lunch.

8 (Whereupon, a recess was had, after which time the  
9 following proceedings were had out of the presence  
10 of the jury.)

11 THE COURT: All right. Now, where's your witness?

12 MR. HENDERSON: He's out in the hall, Your Honor.

13 THE COURT: He'll be able to tell us if he got what  
14 we were asking, so let's bring him in and put him on the  
15 witness stand.

16 (Witness resumed stand).

17 You're still under oath.

18 Okay. The jury's out and the defendant is present.  
19 There was an area of investigation that Lieutenant Shemwell  
20 was going to look through their records to see. He's your  
21 witness, you take it from there.

22 EXAMINATION BY MR. HENDERSON:

23 Q. Lieutenant Shemwell, at the recess we go down to my  
24 office and go through the entire case file?

25 A. That's correct.

1 Q. And we didn't find any supplements from Sergeant  
2 Roberson; did we?

3 A. No. Or, from the F. B. I. regarding that.

4 Q. And the F. B. I., as I recall you said, explain to  
5 me, again, how those documents got to Hawaii?

6 A. Sergeant Roberson contacted the F. B. I., submitted  
7 that information, I believe, to Agent Eakin's here, locally.  
8 And she had already opened up a case file with the F. B. I.  
9 on the Federal level, in order to do the blood work and other  
10 DNA evidence that we had. And she sent it to the agents in  
11 Hawaii for them to follow up. The photospreads of everyone  
12 that we could find photos on that was mentioned in any crime  
13 stoppers, any informant information, or any body's name that  
14 came up in the investigation.

15 Q. Sergeant, do you remember whether you ever got a  
16 written supplement containing the results of the photospread?

17 A. No.

18 Q. And we didn't find one either?

19 A. No.

20 MR. HENDERSON: Nothing further, Your Honor. He  
21 never got any written report back from it and we don't have a  
22 written report back from it.

23 THE COURT: Yes, sir, Mr. Garrett?

24 MR. GARRETT: If Your Honor, please, that is not  
25 all of the records that we received to ascertain. I have a

1 supplement that sets out the information provided to the  
2 police department during this investigation that was provided  
3 by the eye witness, James Darnell, and we're requesting that  
4 Officer Shemwell provide copies of the supplements from his  
5 investigative files, regarding the information gathered from  
6 James Darnell.

7 MR. HENDERSON: Isn't that what we were just  
8 talking about.

9 A. I submitted everything that I have.

10 MR. HENDERSON: He's got the supplement. And for  
11 the record, I did go back and double check and it was  
12 furnished to his original counsel, along with all of the  
13 crime stoppers and false lead information. So it's been  
14 around since 1998, at least.

15 THE COURT: Furnished to the defense?

16 MR. HENDERSON: Yes, sir. I keep a complete copy  
17 of everything that I've given to the defense. And Mr. Ron  
18 Johnson got it, along with all the other stuff.

19 THE COURT: Mr. Garrett?

20 MR. GARRETT: Judge, I don't quite understand  
21 counsel's position. We were appointed on this case to  
22 represent Mr. Rimmer in connection with this resentencing.  
23 We filed motions in connection with that appointment. We  
24 filed motions for exculpatory evidence. We got a response to  
25 those motions for exculpatory evidence and discovery motions

1 and what have you. I didn't know that I am held accountable  
2 for documents that the Prosecutor's Office provided to Ron  
3 Johnson.

4 Obviously, we endeavored to gather all of the  
5 documents that we can. But, we haven't been provided any of  
6 this information by the Prosecutor's Office, since we have  
7 been on this case.

8 Quite frankly, the information that I have, the  
9 little bit that I have, regarding this particular subject  
10 matter, that being that of Jim Darnell, came from the  
11 defendant himself. I found no such information in the copies  
12 that I got from Mr. Johnson's office, or Mr. Scholl's office  
13 or the Skahan's office. We haven't been provided with it.

14 Now, if I'm held accountable for something that the  
15 Prosecutor's Office provided to some other counsel on this  
16 matter, during some other trial proceeding, I didn't know  
17 that I was being held accountable. I didn't know that. I  
18 didn't understand that that's they way the rules were. That  
19 once you provide it to some counsel, at some stage, that that  
20 also covers your obligation to provide that information to  
21 present counsel. If it does, then fine, but I didn't  
22 understand that.

23 THE COURT: Did you request from the Public  
24 Defender's Office, Mr. Ron Johnson's file?

25 MR. GARRET: I requested the file from Mr. Johnson?

1 THE COURT: Did they provide it?

2 MR. GARRETT: The documents were provided, how  
3 complete they were --

4 THE COURT: Okay. Did you request through the  
5 Skahan's who handled the appeal, what they had?

6 MR. GARRETT: I got -- let me back up just a  
7 minute. We didn't request documents from Ron Johnson.

8 THE COURT: No, from the Public Defender's Office?

9 MR. GARRETT: I didn't request documents from the  
10 Public Defender's Office. I requested documents from Mr.  
11 Scholl. He was on this case before we were.

12 THE COURT: That's true. He was fired by your  
13 client.

14 MR. GARRETT: Right. Mr. Scholl had gathered  
15 documents from the P. D.'s Office and I went to Mr. Scholl's  
16 office and got everything that he had.

17 THE COURT: Where do you think that your client got  
18 it?

19 MR. GARRETT: From one of these counsels.

20 THE COURT: From Mr. Scholl.

21 MR. GARRETT: Yeah, that's my understanding.

22 THE COURT: He didn't share it with you? He, being  
23 Mr. Rimmer.

24 MR. GARRETT: Mr. Rimmer provided me with the  
25 little information that I do have, as it relates to this

1 particular witness.

2 THE COURT: But, has he provided you with  
3 everything that he has?

4 MR. GARRETT: I don't know.

5 THE COURT: That's something that you don't know?

6 MR. GARRETT: I have no way of knowing that.

7 THE COURT: I'm just putting this on the record,  
8 that's all. And he can't make his lawyer ineffective, so  
9 we've sat that off in the corner some where.

10 MR. HENDERSON: Your Honor, that's the only  
11 supplement that there is about Mr. Darnell. He thinks that  
12 there's a whole investigative file on it, there's not.  
13 There's a two page, or a page and a half supplement on it.

14 MR. GARRETT: Well, the problem with that there is  
15 that the copy that I got has got a couple or three lines that  
16 are not legible. On the copy that I have.

17 THE COURT: See if Mr. Henderson has something.

18 MR. HENDERSON: Your Honor, if I thought that we  
19 were fighting over whether or not two lines were legible, we  
20 probably could have handled this some time ago.

21 THE COURT: Well, that's not the point. The Court  
22 has already told y'all that the limits that the Court is  
23 looking at with regard to ruling, because this whole thing  
24 may only apply to show that the defendant did, or did not  
25 commit a robbery.

1 Vague leads are not before the Court in this  
2 proceeding.

3 MR. GARRETT: Sir?

4 THE COURT: Vague leads are not properly before the  
5 Court in this proceeding. And that's why we took the recess  
6 to see if we could clear some of this up.

7 Now, have you been given --

8 MR. HENDERSON: There is one sentencing missing off  
9 the top of the second page, Your Honor.

10 THE COURT: A sentence is missing off what?

11 MR. HENDERSON: One line is missing at the top,  
12 Your Honor.

13 THE COURT: Okay. One line. Now, does that  
14 improve the document that you were given by your client?

15 MR. GARRETT: Yes, sir.

16 THE COURT: Does it make a difference?

17 MR. GARRETT: Yes, sir.

18 THE COURT: Okay. So where are we now?

19 MR. GARRETT: We are ready to proceed and I want to  
20 pass this to the witness and have him testify regarding the  
21 information that the police department was provided through  
22 the eye witness, James Darnell.

23 THE COURT: All right. Any objections before we  
24 proceed?

25 MR. HENDERSON: No, Your Honor, but the only thing



1 is, I would like to get a copy of that page for my file,  
2 because I'd like to keep this file complete, in case ten  
3 years from now I have to go back and do this, again.

4 THE COURT: We can do that. And then we'll be  
5 ready?

6 MR. HENDERSON: Yes, sir.

7 THE COURT: Okay. In the meantime let's take just  
8 a short recess. Mr. Rimmer step out and we'll proceed  
9 shortly.

10 (Whereupon, a recess was had, after which time the  
11 following proceedings were had in the presence  
12 of the jury.)

13 THE COURT: Mr. Garrett, you may proceed.

14 MR. GARRETT: Thank you, Your Honor.

15 CONTINUED CROSS EXAMINATION

16 BY MR. GARRETT:

17 Q. Lieutenant Shemwell, did you tell the jury, sir,  
18 that sometime during the investigation of the incident  
19 involving Ms. Ricci Ellsworth's disappearance that there was  
20 an individual who was identified as an eye-witness?

21 A. An eye-witness to the crime? No, I did not.

22 Q. Did you identify an individual that was listed as  
23 an eye witness?

24 A. An eye-witness to the crime? No, sir.

25 Q. Did you identify an individual that was identified

1 in your records as an eye-witness?

2 A. You'll have to elaborate on that, because I don't  
3 know what you want me to say. An eye-witness to what? I  
4 don't recall me listing, or telling this jury that there was  
5 an eye-witness to the crime at all, no.

6 Q. Let me pass you a document, sir.

7 (Document tendered to the witness).

8 Look at that Lieutenant, and if you would, tell the  
9 jury what that is, please?

10 A. It's the incident report, is the heading. It list  
11 people as to the possible relationship to this crime, whether  
12 or not that individual's involved, or they might be a  
13 witness. And if they're a witness, a witness to what. What  
14 they might be a witness to, or suspect information.

15 Q. And who prepared that report?

16 A. I did.

17 Q. Do you see a person listed on there by the name of  
18 Jim, or James Darnell?

19 A. Yes, sir.

20 Q. And under relationship, next to his name, what does  
21 it say?

22 A. It says, "witness/eye".

23 Q. Does that mean the same thing as eye-witness?

24 A. That's not what you asked me, Mr. Garrett. You  
25 asked me did I tell this jury if there was an eye-witness.

1 No, I did not.

2 Q. I understand. Does that mean the same thing as  
3 eye-witness?

4 A. It means that he was there and he saw something.  
5 That's correct.

6 Q. Did you speak with James Darnell?

7 A. By phone, yes.

8 Q. To your knowledge did James Darnell come to your  
9 office or to the police station and give a statement  
10 regarding what he observed on the evening of February the  
11 7th, or early morning hours of February the 8th, 1997?

12 A. Yes, he did so, at my instructions.

13 Q. Were you present when he came to your office?

14 A. Yes. And I instructed Sergeants Bodding and  
15 Wilkinson to speak with him.

16 Q. And was there an investigative report prepared  
17 covering the information that James Darnell provided to your  
18 office?

19 A. There was a typed statement from James Darnell by  
20 those investigators.

21 Q. And would that statement had been typed on, or  
22 about the time that James Darnell gave the department the  
23 information?

24 A. That's correct.

25 Q. And is that statement kept as a part of your

1 investigative file in this case?

2 A. Yes, sir. It was submitted with the rest of these  
3 statements.

4 Q. Let me pass you a document, sir. If I could have  
5 the first one back, please.

6 (Document tendered to witness).

7 MR. GARRETT: If Your Honor, please, I would like  
8 to have this document marked for identification purposes  
9 only.

10 THE COURT: Which document?

11 MR. GARRETT: The one that I'm passing to the  
12 witness.

13 THE COURT: Well, he's got to identify it, first.

14 MR. GARRETT: Yes, sir.

15 THE COURT: Your just a little early in your  
16 request.

17 MR. GARRETT: Yes, sir. Thank you, Judge.

18 Q. Lieutenant Shemwell, can you identify the document  
19 that you've just been handed, please?

20 A. Yes, it's a supplement. It not a complete  
21 supplement that was written, part of it is missing. The top  
22 part of it.

23 Q. But, can you identify that as a supplement to what,  
24 sir?

25 A. Supplement to this case file, in regards to

different individuals that we talked to.

Q. And would that portion of the supplement be a document that's kept as part of the investigative records in this case?

A. Yes. Or, actually, the complete. This is just a copy and like I said, it's missing the top part of it, it is not complete.

Q. Does that document reflect the information that was provided to the police department by the eye-witness, James Darnell?

A. It has 22:00 hours on this particular date and, again, I would have to guestimate what date that is, because it's not on the top part of the document. James Darnell called the office and identified himself as Jim Darnell and gave me his date of birth and social security number and home address, where his parents were staying and his phone number. And advised that he was stationed in the Army, stationed currently in Hawaii.

Q. And how old is Mr. Darnell?

A. At this time he's 32 years of age.

Q. And he gave you his social security number and his home address as you've indicated and the fact that he was stationed in Hawaii at that time?

A. That's correct.

Q. What does it say after that, sir?

1 THE COURT: Hold it. First of all you're going to  
2 ask me to have this marked for identification purposes, only?

3 MR. GARRETT: Yes, sir.

4 THE COURT: And you're wanting him to read from  
5 this paper to the jury, something that is, number one, not  
6 marked for anything. Number two, if it's marked for  
7 identification purposes only, it's not available to the jury.  
8 Now, what do you want to do?

9 MR. GARRETT: I'd like to have that document marked  
10 as the next exhibit in this case.

11 THE COURT: For identification purposes only?

12 MR. GARRETT: No.

13 THE COURT: Evidence?

14 MR. GARRETT: Evidence.

15 THE COURT: State?

16 MR. HENDERSON: Objection, Your Honor, it's  
17 hearsay. It's also irrelevant, a great deal of it.

18 THE COURT: I don't know that, because I'm not  
19 looking at it.

20 Y'all step out just a minute. Don't get happy  
21 about y'all being back in the back.

22 (Whereupon, the jury retired from open court and the  
23 following proceedings were had as follows:)

24 THE COURT: All right. Let's take a recess, let me  
25 look at this. Mr. Rimmer can step out and then I'll come

back in and see where we are.

MR. GARRETT: Your Honor, before we go off the record can I, just for Your Honor's benefit, so we can identify the portion of this that the defense is interested in?

THE COURT: I pretty well know. If it doesn't apply to that witness. Do you see what I'm saying?

MR. GARRETT: Yes, sir. I'm sorry, Judge.

THE COURT: See what I'm saying? That's the reason I'm looking. So we both understand each other. And I appreciate you bringing it up, because otherwise --

MR. GARRETT: Yes, sir.

THE COURT: Take a recess.

(Whereupon, a recess was had, after which time the following proceedings were had out of the presence of the jury.)

THE COURT: What was given to the Court when I began to read it, on the first page, the title at the top is handwritten, "Add to Dixie Roberts". Second paragraph from the bottom begins; "22:00 hours the writer received a call from a male white identifying himself as Jim Darnell, 32 years of age, D.O. B. 12-17-65. Social security number 414-94-2007. H.A. 7270 -- stationed in Hawaii"

This is the next paragraph; "Darnell advises that he and a female, Dixie Roberts; went to the motel on 2-8-97

1 around 1:45 to 2:00 a.m. and pulled up out front of the side  
2 of the check-out glass in the office area, also with what  
3 appeared to be blood on his knuckles."

4 It makes no sense.

5 MR. SPRINGER: I believe, Your Honor, the problem  
6 with the documentation that you received is that the top two  
7 lines of that next page is absent.

8 THE COURT: Well now, if that's true and Mr.  
9 Henderson just said that he gave you the complete copy.

10 MR. GARRETT: Judge, I inadvertently passed the  
11 wrong copy up.

12 THE COURT: All right. We don't have the -- does  
13 this help you, Lieutenant?

14 A. Yes, sir, it does.

15 THE COURT: Well, pass this back, we've got the  
16 wrong copy. Pass that one up and let me look at it. How  
17 about that?

18 MR. GARRETT: Yes, sir. I'm sorry about that, Your  
19 Honor.

20 THE COURT: That's all right. We're all tired and  
21 we only have about five more days to go. Take a recess.

22 (Whereupon, a recess was had, after which time the  
23 following proceedings were had out of the presence  
24 of the jury.)

25 THE COURT: All right. Obviously, we all agree



1 some of this has got to be redacted if I let it in. This  
2 paper-writing at the top, "Add to Dixie Roberts", being the  
3 issues that are before the Court, begins at the second  
4 paragraph from the bottom, on the first page of it.

5 On the second page, as I'm looking at it, it ends  
6 after the last sentence, "Darnell advised that he would come  
7 to the homicide office in the morning and give a statement  
8 about what he observed". And then it's got a date of 12-13-  
9 97. And it says, "End of supplement".

10 I'm holding three pages, one of which doesn't apply  
11 to this, at all. Is that right?

12 MR. GARRETT: If Your Honor's talking about the  
13 first page, that's true.

14 THE COURT: It starts with; "Thursday, February the  
15 13th, Dixie Lee Roberts came to the office -- ", see what I'm  
16 saying?

17 MR. GARRETT: Yes, sir, that applies to this, too.

18 THE COURT: It doesn't apply to Darnell.

19 MR. GARRETT: Dixie Roberts and Jim Darnell were  
20 together.

21 THE COURT: No, no. I've already ruled. I'm not  
22 going to do that. All of the vague leads that are before the  
23 Court will not be pursued. I have read what Dixie Roberts  
24 says and no where does she say anything about somebody being  
25 in the secure area with bloody knuckles. Tell me about it?

1 Go ahead.

2 MR. SPRINGER: Well, Your Honor, I don't know how,  
3 necessarily, as it pertains to Jim Darnell, but --

4 THE COURT: It doesn't.

5 MR. SPRINGER: I understand that. However, for the  
6 purposes of the rest of our cross-examination, Dixie Roberts,  
7 the evidence that they relied upon to get a description of  
8 the vehicle that they alleged was used to transport Ms.  
9 Ellsworth's body was gathered from Ms. Dixie Roberts. And  
10 she gave a statement, too. So I don't know if that would be  
11 necessarily a vague lead. Much of the evidence that they  
12 used --

13 THE COURT: What I'm saying, gentlemen, is, I'm  
14 dealing with one of these at a time. If I don't, my record  
15 isn't going to be worth reading.

16 MR. SPRINGER: Absolutely, Your Honor. And as it  
17 relates to James Darnell, the third page is not relevant at  
18 this point.

19 THE COURT: Thank you. The state has objected that  
20 it is hearsay and while I agree, because the state is using  
21 felony murder as an aggravator, to-wit; robbery, I'll let it  
22 in, as to Jim Darnell, after redaction.

23 Now, the redaction is going to have to be done now.  
24 So we will take a recess. Y'all can use the A. O. C.'s photo  
25 copier in there across the hall. And then we'll determine

1 whether or not it rises to the level of being introduced for  
2 I. D., or evidence, in the redacted form.

3 I'm returning all of these three papers to the  
4 defense and we will take a recess. Mr. Rimmer can step out.  
5 Lieutenant you can step down again.

6 (Whereupon, a recess was had, after which time the  
7 following proceedings were had out of the presence  
8 of the jury.)

9 THE COURT: Defendant's present. Witness resume  
10 the stand.

11 Have you got the redacted copy?

12 MR. GARRETT: Yes, Your Honor.

13 THE COURT: Pass that up. I need to see it just a  
14 minute.

15 (Document tendered to the Court).

16 All right. Does everybody agree? Let me hear it?

17 MR. HENDERSON: Well, without waiving my objection,  
18 for what it's worth, I agree to it being --

19 THE COURT: No, I'm agreeing to the redaction.  
20 Now, I'll take objections after the agreement.

21 MR. HENDERSON: All right. I agree to the  
22 redaction, yes.

23 THE COURT: Thank you. Now, objections? Hearsay  
24 and --

25 MR. HENDERSON: And I object to it being marked as

1 an exhibit to be given to the jury, because I think it unduly  
2 emphasizes a hearsay statement over the oral testimony of  
3 other witnesses.

4 If it's going to be introduced it ought to be read  
5 to the jury, but not given to them as an exhibit to take back  
6 to the jury room. Because then it overly emphasizes, by  
7 giving them that in writing, a hearsay statement, which give  
8 them words that these weren't witnesses who testified.

9 THE COURT: Well, and that's what Mr. Garrett was  
10 attempting to do when he was asking the witness a question.  
11 And it was the Court's involvement in the proceedings that he  
12 really couldn't do anything until we decided whether or not  
13 it was evidence or not. Or, whether or not it was for  
14 identification. Under a rule of identification it's  
15 allowable by consent of both sides, to read this and say, yes  
16 this is what he said. All right, defense?

17 MR. SPRINGER: Your Honor, we have no objection if  
18 the jury is not allowed to take it back. I think the witness  
19 will be sufficient for the jury to consider.

20 THE COURT: Yeah. There you go.

21 MR. SPRINGER: And give whatever weight to it.

22 THE COURT: Okay. Mr. Garrett, are you ready?

23 MR. GARRETT: Yes, sir.

24 THE COURT: All right. We're going to mark it  
25 first, or do you want to just use it as you were attempting

1 to do, which is --

2 MR. GARRETT: I think we still have to mark it for  
3 identification purposes.

4 THE COURT: At least that makes it part of the  
5 technical record.

6 MR. GARRETT: Yes, sir.

7 THE COURT: Mark it for identification as exhibit  
8 number thirty-two. And that is a paper-writing of -- what's  
9 the witnesses name?

10 A. James Darnell.

11 THE COURT: Well, it will show up on the transcript  
12 if there's a need for appellate review, they'll find it.

13 (Exhibit number thirty-two was marked and filed for  
14 record as evidence.)

15 Anything else?

16 MR. HENDERSON: No, sir.

17 THE COURT: Bring in the jury.

18 (Whereupon, the jury returned to open court and  
19 the following proceedings were had, to-wit:)

20 THE COURT: Mr. Garrett, you may proceed.

21 MR. GARRETT: Thank you, Your Honor.

22 Q. Lieutenant Shemwell, I believe you identified that  
23 supplemental report regarding the information that you got  
24 from the eye-witness, James Darnell; is that correct, sir?

25 A. There is a supplement regarding information that

James Darnell called and gave me, that's correct.

Q. Do you have a copy of the report that sets out the information that your office received from James Darnell?

A. Yes, that's the information that I typed up.

Q. Would you share that with the jury, please?

A. It says; "22:00 hours the writer received a call from a male white identifying himself as Jim Darnell, 32 years of age, date of birth, 2-17-65. Social security number 414-94-2007, home address 7270 Stomford, S-T-O-M-F-O-R-D, Drive, Germantown, Tennessee, which is actually his parents address. Home phone number 754-2989, work is currently, or at that time, is in the Army stationed in Hawaii.

Darnell advised that he and a female white, Dixie Roberts, went to the motel on 2-8-97 around 1:45 to 2:00 a.m. He pulled up in front of the check-out window, saw a male white bleeding from his hands and another male white on the other side of the check out glass and office area, with also, what appeared to be blood on his knuckles.

He described the first male white outside the checkout window as being about 23 to 24 years of age, red hair, long, wearing a ball cap, orange, with a white adjustable band on the back, blue jeans and a tee shirt with the sleeves cut off, or rolled up.

He was very drunk and had numerous freckles on his arms. The subject was described to have blood dripping from

his knuckles.

The second male white, who Darnell believed to have been the clerk, was described as being about 30 years of age, brown hair and mustache, long hair, wearing a dark colored jacket and blue jeans. The subject also looked as if his knuckles were bleeding, but not as bad as the first subject.

Darnell stated that he stood there, but as he stood there he observed the male white, he believed to be the clerk, hand some money through the check out window to the other subject, both dollar bills and some change.

He thought that the two had gotten into a fight and that the clerk was attempting to get the guy to leave, or give him back his money.

He did advise that it was strange that neither had any injuries to their face and weren't bleeding from anywhere other than their hands.

He advised that he became very uncomfortable and decided to leave and go somewhere else. When he got to his car he did mention to Dixie that the two guys were bleeding from their knuckles and he had advised that he had just found out about the clerk missing from the hotel the day before and wanted to call before he left to go to Hawaii.

Darnell further advised that he might be able to identify the two male whites that he saw in the motel on 2/8 of '97, if he saw them again.

1 He further advised that there was a vehicle that  
2 was backed in front of the night entrance when he went  
3 inside. He described this vehicle as being a black, or a  
4 dark colored, possibly, Toyota, with light colored interior,  
5 being a fairly newer model vehicle.

6 Darnell advised that he could come to the homicide  
7 office in the morning and give a statement about what he  
8 observed, 2/13/97, end of summary".

9 Q. 2/13/97, what does that date indicate?

10 A. That indicates the date that he was going to come  
11 in.

12 Q. Do you know whether he did come in, or not?

13 A. Yes, he came in.

14 Q. And he gave a statement?

15 A. Yes, he did.

16 Q. Did he corroborate, basically, what you have in  
17 your report, in his statement?

18 MR. HENDERSON: Objection, calls for an opinion.

19 THE COURT: Do you want to deal with the objection?

20 MR. GARRETT: I'll withdraw the question.

21 THE COURT: Can't consider it.

22 Q. Were there any efforts made, Lieutenant Shemwell,  
23 to see if James Darnell could identify the individuals that  
24 he said that he saw on that evening, as just indicated in  
25 this statement that you read?



1 A. Yes, there was.

2 Q. What was done in that regard?

3 A. I had an investigator in my office get with the F.  
4 B. I. agent, who was assigned, had already opened a case with  
5 the F. B. I. office, regarding the DNA evidence, to contact  
6 the Hawaii office. Sent them all photographs of everyone  
7 that we have compiled, through crime stoppers, T. F. & N.  
8 information. I think it's something like 50 something  
9 photographs. Sent them out to that agent in Hawaii to meet  
10 with Mr. Darnell. He viewed the photospread.

11 Q. Did he identify anyone as being one of the  
12 individuals that he observed in the hotel on the evening in  
13 question?

14 A. He could not positively identify anyone, no.

15 Q. And was Mr. Michael Rimmer's photo included in that  
16 group of photos that were sent out to Hawaii for him to  
17 view?

18 A. Yes.

19 Q. Did you have any communication, or did your office  
20 have any communication with Mr. Darnell since the time that  
21 the photos were sent out for his review?

22 A. No.

23 Q. Do you know, Lieutenant Shemwell, whether this  
24 information was presented in Mr. Rimmer's last trial?

25 MR. HENDERSON: Objection, Your Honor, that would

1 be irrelevant.

2 THE COURT: Do y'all want to respond?

3 MR. GARRETT: Yes, sir.

4 THE COURT: Come on up.

5 (A bench conference was held on the record  
6 in the presence of the jury, but out of it's  
7 hearing and the following proceedings were  
8 had, to-wit:)

9 MR. HENDERSON: It's my position that it would be  
10 irrelevant. It's one thing to put on proof of lingering  
11 doubt. It's another thing to do it collateral attacking the  
12 verdict by a jury in front of another jury. It's like a  
13 post-conviction with a jury. I don't see how it's going to  
14 help this jury to determine whether or not what to sentence  
15 this defendant to.

16 THE COURT: Do you want to respond to that?

17 MR. SPRINGER: If I could, briefly, Your Honor.  
18 Although this is a re-sentencing hearing, we understand that  
19 this is not directed towards the original guilt evidence in  
20 the guilt or the innocent phase. This, in essence, is one  
21 trial. This is still part of the same, original trial. If  
22 testimony was given at that trial on, which is basically what  
23 all of the evidence is that we have in this resentencing,  
24 then I think that it is relevant for the purpose of the  
25 sentencing hearing. If Mr. Darnell on seeing the harm of

1 this information, whether or not it was presented, wasn't  
2 testified at the trial. I think that the way that the Court  
3 should look at it and obviously this is just my opinion is  
4 that it influences the resentencing, is we have to put  
5 ourselves in a mind-set that this is as if this trial is  
6 following immediately after the guilt, innocence phase.  
7 Although, we have to obviously put forth, there needs to be  
8 proof, enough proof to distribute, because they didn't have  
9 the guilt or innocent phase to consider all of the other  
10 proof.

11 THE COURT: Sir?

12 MR. HENDERSON: As I understand lingering doubt,  
13 that goes to anything that shows that he's not guilty. Not  
14 that it shows that he didn't get a fair trial, that he didn't  
15 get a perfect trial, or that if they had of done it  
16 differently had they been trying it. It goes to whether or  
17 not there is proof that he didn't do it. So I think it would  
18 cause doubt as to his mental status, or something. Not just  
19 an attack on the preceding, proceedings.

20 MR. SPRINGER: Unfortunately, Your Honor, like I  
21 say, this jury now wasn't privy to the original trial, or  
22 privy to the transcripts of the original trial, so they don't  
23 have that. But, I think that it's important that they have  
24 enough information about that trial, on the guilt and  
25 innocence evidence, as possible. As if they had sat there.

1 Obviously that's not normal, but I think that it's important  
2 they get as much information so that they can consider any  
3 and all mitigating circumstances surrounding it.

4 MR. HENDERSON: The next step would be to let them  
5 call a lawyer in to start talking, in their opinion, about  
6 how badly the first defense lawyers did. That's just post-  
7 conviction. It has nothing to do with his actual guilt, or  
8 innocence, which is what lingering doubt is about, actual  
9 guilt, or innocence.

10 THE COURT: Lingering doubt is defined as that.

11 MR. SPRINGER: I understand, Your Honor.

12 THE COURT: And I can't accept what you're doing as  
13 being lingering doubt.

14 MR. SPRINGER: I understand.

15 THE COURT: All right.

16 (Said bench conference having been completed,  
17 the following proceedings were had in the presence  
18 of the jury:)

19 Q. Lieutenant Shemwell, you testified on direct that  
20 as the coordinator on this case, you were the person  
21 responsible for meeting with the D. A.'s office and  
22 discussing the evidence that your investigation has  
23 uncovered; is that correct?

24 A. That's correct.

25 Q. Did you also say that you would discuss with the D.

1 A.'s office what charges would be filed against the  
2 defendant?

3 A. I present the case to the District Attorney and he  
4 decides the charge.

5 Q. Did you, sir, at any time during the investigation  
6 of this case, uncover any evidence of a firearm being used in  
7 the robbery that took place at the Memphis Inn on the evening  
8 of February the 7th, or February 8th of 1997?

9 MR. HENDERSON: And I would object to the grounds  
10 of relevance, Your Honor. The state has not alleged any  
11 firearm on this particular indictment and that's the one that  
12 we tried and it's not relevant to the sentencing for this  
13 capital murder case.

14 THE COURT: Approach the bench.

15 (A bench conference was held on the record  
16 in the presence of the jury, but out of it's  
17 hearing and the following proceedings were  
18 had, to-wit:)

19 THE COURT: If I understand what the objection is,  
20 unless there is something that you can tell me, different,  
21 the objection is correct.

22 MR. SPRINGER: Well, the problem is that Mr. Rimmer  
23 -- part of the aggravated circumstances is that they're  
24 saying that this robbery was committed by use of a weapon, a  
25 firearm.

1 MR. HENDERSON: That's the definition of robbery,  
2 which does not require a firearm.

3 THE COURT: No.

4 MR. SPRINGER: According to the indictment, I'm  
5 reading in the convictions that came down as part of --

6 MR. HENDERSON: He was convicted of armed robbery,  
7 but the allegation for the aggravating factor is the murder  
8 was committed during the perpetration of a robbery. He  
9 was convicted of aggravated robbery and it was affirmed by  
10 the Court of Criminal Appeals. So I think that to ask  
11 somebody else if there is any evidence of a firearm, is  
12 probably going a little too far, since it's been affirmed.  
13 He absolutely, as a matter of law, was using a firearm.

14 MR. SPRINGER: Well see, that's the problem. I  
15 think that mitigating and residual doubt proof is very much  
16 that it goes to that. I ask Your Honor, if there hasn't been  
17 no evidence at all, deduced at the trial level, or even at  
18 the sentencing level, that there has been no use of a  
19 firearm, then I think it goes directly to residual doubt in  
20 that sense. Even if there has been a jury decision that  
21 there is --

22 THE COURT: And the Court of Appeals.

23 MR. SPRINGER: I understand that, Your Honor, but  
24 our position, though is, that there has been no one at the  
25 sentencing hearing that's testified to a firearm and based on

1 my reading of the transcripts, no one testified to the use of  
2 a firearm.

3 MR. HENDERSON: But they did. You need to read Mr.  
4 Allards (phonetically) testimony, that said the defendant  
5 shot her twice. And the jury believed that and so did the  
6 Court of Criminal Appeals.

7 MR. SPRINGER: Well, I think that it still goes to  
8 residual doubt. Residual doubt proof is --

9 THE COURT: There is no residual doubt if the Court  
10 of Appeals has accepted that man's testimony.

11 MR. HENDERSON: Residual doubt as to the armed  
12 robbery. We can't retry that. We have no jurisdiction to  
13 retry that. It's not relevant to the murder indictment.  
14 Murder in the perpetration is simple robbery.

15 THE COURT: Okay. You are welcome to preserve this  
16 for appeal.

17 MR. SPRINGER: Absolutely, Your Honor, if you'll  
18 just note our objection.

19 (Said bench conference having been completed,  
20 the following proceedings were had in the presence  
21 of the jury:)

22 THE COURT: All right. You may proceed.

23 Q. Lieutenant Shemwell, did you, during your  
24 investigation of this case receive any information from any  
25 witness regarding, other than Mr. Darnell, regarding a

1 vehicle that was parked at the hotel on that particular  
2 evening?

3 A. Yes, sir.

4 Q. And what information did you receive in that  
5 regards, sir?

6 A. I received that there was a vehicle backed up at  
7 the night entrance with the door slightly opened, the  
8 interior light was on and that it was a darked colored  
9 vehicle and that the interior was a lighter colored. And  
10 that it was, possibly, the model of a Toyota, or a small  
11 model car.

12 Q. And was it pulled in, or backed in?

13 A. This witness advised that it was backed in.

14 Q. And did they tell you anything about the trunk of  
15 that vehicle?

16 A. That it was --

17 MR. HENDERSON: I object at this point, Your Honor,  
18 to hearsay from an anonymous source, we could be here the  
19 rest of the month. It's hearsay.

20 THE COURT: Do you want to respond?

21 MR. GARRETT: Your Honor, I thought that we had  
22 dealt with the hearsay aspect of this, for sentencing  
23 purposes that the hearsay did not apply.

24 THE COURT: Sir? Yes, it does. It can be relaxed,  
25 but it applies. Unless you've got a case, sir, to cite,



1 either one of you, I sure must have missed that.

2 MR. SPRINGER: Your Honor, may we approach?

3 THE COURT: Yeah, come on up.

4 (A bench conference was held on the record  
5 in the presence of the jury, but out of it's  
6 hearing and the following proceedings were  
7 had, to-wit:)

8 THE COURT: From the standpoint of relaxed hearsay,  
9 I accept it. Hearsay does exist.

10 MR. SPRINGER: Well, in my reading of the statute,  
11 the sentencing statute Teague, Hartman, Austin, everything  
12 that I've read. In fact, Austin cites the same language, it  
13 cites from Teague, the exact same language. That hearsay is  
14 admissible, notwithstanding the rules of evidence. The rules  
15 in evidence, in essence, when they said it, don't apply for  
16 the purposes of a capital murder hearing. And that is my  
17 understanding and that is a quote from Teague and that is a  
18 quote from Austin and that is a quote, also --

19 THE COURT: That is a quote from Teague 897 SW2nd,  
20 248 and you're saying that it's a quote from Austin 87 SW3rd,  
21 447?

22 MR. SPRINGER: Yes, Your Honor, that same language  
23 from Teague has already been --

24 THE COURT: That it's waived?

25 MR. SPRINGER: No, it's not waived.

1 THE COURT: It's what?

2 MR. SPRINGER: It says, basically, the credible  
3 evidence of the circumstances --

4 THE COURT: Credible?

5 MR. SPRINGER: Relevant.

6 THE COURT: Relevant?

7 MR. SPRINGER: Right. And I think based on the  
8 circumstances there has been evidence already in this trial  
9 that --

10 THE COURT: I'm telling you now that it can be  
11 relaxed, but it's got to be credible and it's got to be  
12 relevant.

13 MR. SPRINGER: And our contention is that it is  
14 credible and it is relevant. These are witnesses that they  
15 did their initial investigation on and based their schedule  
16 on and based on all the pursuing of their investigation. And  
17 in light of the fact the crime scene has already testified  
18 that basically there was a parking spot right as you exited  
19 that door and that the blood stain, on the ground there was  
20 right at the curb.

21 There is an argument, I think, that we can make and  
22 one of them is that I think it is relevant, Your Honor, based  
23 upon all the facts and circumstances if you take the totality  
24 of the testimony that's already been given and the  
25 reliability of the witnesses that have, these weren't

witnesses.

1  
2 MR. HENDERSON: Your Honor, I ask that if counsel  
3 believes that the rules of evidence regarding hearsay do not  
4 apply to this hearing, would I be allowed then to ask this  
5 officer what Ms. Frazier told him about Mr. Rimmer and the  
6 shovel.

7 MR. STRINGER: I don't have problem with that, if  
8 you want to argue that, if you can clarify that it's relevant  
9 and it's rebutting some evidence that we put forth, then I  
10 don't know that the Court can rule any other way.

11 MR. HENDERSON: So you wouldn't object to it on the  
12 basis of hearsay?

13 MR. STRINGER: No, no, what I'm telling you is, if  
14 you are rebutting evidence that we have put forth that is  
15 against residual doubt, then the Judge would have to follow  
16 the law in that regard.

17 MR. HENDERSON: If residual doubt is a defense and  
18 the hearsay rule doesn't apply, my next exhibit is this  
19 package of papers, the investigative report in this case.  
20 I'll ask the officer to read it, beginning on page one until  
21 the end of it.

22 MR. SPRINGER: And we can take time out of the  
23 hearing and let the jury go and let the Judge redact whatever  
24 it is. But, I know Dixie Roberts, the individual who gave  
25 this information about the trunk being opened, testified at

1 trial. And she testified to that fact at trial.

2 THE COURT: She testified at trial?

3 MR. SPRINGER: Yes, she did. Dixie Roberts Presley  
4 was her name. And she testified at trial.

5 MR. HENDERSON: Well, why isn't she testifying this  
6 time?

7 MR. SPRINGER: That's your responsibility.

8 MR. HENDERSON: I didn't issue a subpoena. You're  
9 using her as hearsay.

10 MR. SPRINGER: Well we need her here in this  
11 sentencing hearing, I believe.

12 MR. HENDERSON: I beg to differ, Your Honor. If  
13 the rules of evidence don't apply at sentencing hearings, why  
14 do we call them hearings?

15 THE COURT: They do. We have to determine whether  
16 or not they're material.

17 MR. HENDERSON: And I'd say there's another 150  
18 false leads out there. We'll just have to go through them  
19 one at a time.

20 THE COURT: No, no they don't. And it says, if  
21 relevant, I underlined, hearsay is admissible.

22 MR. SPRINGER: Absolutely. And I think it is.

23 THE COURT: And then, that is your position. If it  
24 wasn't you wouldn't be asking me questions. I understand  
25 that. And it's relevant for what purpose?

1 MR. SPRINGER: It's relevant because the four  
2 officers that have testified so far, testified that they went  
3 based on this maroon car description, one of which Ms. Dixie  
4 Roberts Presley testified to at trial. She initially  
5 testified to the fact that this trunk, that she saw his car  
6 backed in with the trunk opened, the door open and the lights  
7 on. That was at trial in this particular case.

8 THE COURT: And what?

9 MR. SPRINGER: I think it's relevant, because you  
10 have crime scene who testified that they followed this trail  
11 of blood all the way out, that it was on the curb, a nice  
12 amount of blood.

13 THE COURT: From where the car was parked?

14 MR. SPRINGER: Where the car was parked.

15 THE COURT: Why are you wanting to put it in?

16 MR. SPRINGER: Because, the state's proof has been  
17 that all this blood was found in the back seat of this car.  
18 If the trunk is open they find, and the crime scene officer  
19 also testified that there was no blood found on the parking  
20 lot anywhere. They searched everywhere. And if there's no  
21 blood found in the parking lot, how was this individual  
22 carried out to the parking lot, where it left blood  
23 everywhere else, but on the parking lot. But at the curb  
24 where it stopped, where there could have been a car parked.  
25 It's more likely that that individual was placed, if she was,

1 in deed, carried --

2 THE COURT: In somebody else's car?

3 MR. SPRINGER: In the trunk. And we say that trunk  
4 and that car didn't belong to the defendant.

5 THE COURT: Then why did it end up in Mr. Rimmer's  
6 car? I understand what you're saying, but it's got to be  
7 relevant.

8 MR. SPRINGER: Well obviously, it was relevant for  
9 the purpose of trial. I'm trying to understand why it's not  
10 relevant for the purpose of sentencing.

11 THE COURT: I'm going to let it in.

12 MR. HENDERSON: And I'm going to be able to offer  
13 this package?

14 MR. SPRINGER: And I'll object.

15 THE COURT: There you go.

16 MR. SPRINGER: And we may need to have a jury out  
17 motion.

18 THE COURT: We may, or we may not. I don't know.  
19 It depends on what is developed during your proof. Okay?

20 MR. SPRINGER: Absolutely.

21 THE COURT: Go ahead and ask that question.

22 (Said bench conference having been completed, the  
23 following proceedings were had in the presence of the  
24 jury:)

25 THE COURT: All right.

MR. GARRETT: Thank you, Judge.

1 Q. Lieutenant Shemwell, did you get information from a  
2 witness regarding a description of a vehicle that was parked  
3 out at the Memphis Inn on the night in question?  
4

5 A. Yes, sir.

6 Q. And do you recall who the witness was that provided  
7 this information?

8 A. I had several, but the one you're speaking of was  
9 Dixie Roberts.

10 Q. Tell the jury what she told you she saw?

11 A. It was the vehicle backed in at the night entrance.  
12 One of the doors was opened, or had to be open, because the  
13 interior light was on. The trunk was open and it was a dark  
14 colored vehicle, a Toyota model. She thought to be a newer  
15 model. And that the interior was lighter colored than the  
16 exterior.

17 Q. You indicated that you went to Indiana and you were  
18 present when the car that Mr. Rimmer was driving was  
19 inventoried?

20 A. That's correct.

21 Q. And you were present when the sample was taken from  
22 the back seat that had, what appeared to be, blood stains on  
23 it?

24 A. That's correct.

25 Q. Was the trunk of that vehicle inventoried, also?

1 A. Yes, it was.

2 Q. Did you take any samples from the trunk of that  
3 vehicle for the purpose of identifying blood stains?

4 A. I recall there was a -- I want to say, a hammer, a  
5 large hammer that was in the trunk of the car, with what we  
6 thought might be blood, or hair on it. That was submitted to  
7 T. B. I. and I can't recall what else. I know the back seat  
8 had a big duffle bag on it and that was the other  
9 individual's that was hitch hiking, who was in the vehicle  
10 with Mr. Rimmer at the time. The trunk of the car, I want to  
11 say, another tote bag in there which was, I think, Mr.  
12 Rimmer's clothing.

13 Q. Did you find any evidence of blood in the trunk?

14 A. Not that I recall.

15 Q. Now, you say the back seat had what on it?

16 A. The back seat had a large, like a duffle bag, and  
17 it was my understanding it was the individual's who Mr.  
18 Rimmer was arrested with at the time. It was his. He  
19 advised that it was his bag of clothing. It was laying  
20 across the back seat of the car.

21 Q. Were you there when that duffle bag was  
22 inventoried?

23 A. Yes.

24 Q. Was this duffle bag anywhere in the area where the  
25 blood stains were later found on the back seat?



1 A. It was on top of the blood stains.

2 Q. Can you tell this jury the stains that you're  
3 referring to as blood stains, what condition they were in?  
4 Was it wet? Was it dry? Do you know?

5 A. It was dried blood.

6 Q. Can you tell the jury from what portion of the seat  
7 the sample was taken from that was sent to the F. B. I. lab?

8 A. I believe he cut the sample from the passenger  
9 side, rear seat. There was a photograph taken prior to that  
10 cutting and after that cutting, if I'm not mistaken.

11 Q. Were you there when this car was prepared for  
12 transport back to Memphis?

13 A. No, that was the Indiana investigators, I believe,  
14 met the wrecker driver.

15 Q. How long were you on the scene when this vehicle  
16 was being inventoried?

17 A. I was there the entire time that they inventoried  
18 it.

19 Q. Tell the jury, approximately, how long that would  
20 have been?

21 A. An hour, or an hour and a half, it was like. We  
22 was there for some time.

23 Q. The exterior of this vehicle was what color?

24 A. It was maroon.

25 Q. What color was the interior?

1 (Whereupon, a bench conference was had on the record in  
2 the presence of the jury, but out of its hearing and the  
3 following proceedings were had:)

4 THE COURT: All right. There's an objection. How  
5 does this apply to residual doubt?

6 MR. SPRINGER: Well I think, Your Honor, quite  
7 frankly, this officer testified that the seat where the blood  
8 stain was found was released to the state for the purposes of  
9 trial. And I think that's extremely important. They have  
10 hauled the sink in here. They have hauled various other  
11 materials in here. And they have only put up a drawn, a hand  
12 drawn photographs of this back seat area to indicate where  
13 this blood was found.

14 THE COURT: A co-mingling; is that what you're  
15 saying?

16 MR. SPRINGER: What I'm saying though is, is the  
17 relevant question in light of the fact that the only thing  
18 that the jury has seen so far, is, what the state has  
19 depicted of where this blood was and they could give a  
20 distortion of that, this seat was absolutely covered in  
21 blood, or it was a thing that was maybe five or six meters.

22 THE COURT: I thought that was testified to.

23 MR. SPRINGER: No, the only thing that was  
24 testified to was that there was blood found in various areas  
25 of the seat. But, in terms of the totality of how much blood

1 was --

2 THE COURT: Nobody asked.

3 MR. SPRINGER: Well, then that's --

4 THE COURT: Y'all have the right to cross-examine.

5 MR. SPRINGER: And that's what we're attempting to  
6 do now with the officer who --

7 THE COURT: I'm talking about from the person who  
8 took the --

9 MR. SPRINGER: Mr. Baldwin, my understanding is,  
10 Mr. Baldwin who was the evidence individual from Indiana, who  
11 took the sample. He's not been called to testify. The only  
12 other individual that we feel is Mr. Shemwell. Now,  
13 Lieutenant Shemwell, since he is the coordinator and he is  
14 the only one that information was transferred back to him.  
15 And since Mr. Baldwin isn't here to testify as to what he  
16 saw, I think it's only Lieutenant Shemwell, who would be the  
17 next individual who would know as much information as anybody  
18 else, to testify as to what the condition was, or where --

19 MR. HENDERSON: The question for you is, where is  
20 the car seat? Did they keep the car seat?

21 THE COURT: That's what I'm getting at. What does  
22 it matter.

23 MR. SPRINGER: Well, it may be something that we  
24 would have the jury see. Our problem is, the only thing that  
25 the jury --

1 THE COURT: Not in this part of the trial.

2 MR. SPRINGER: My concern is that they brought in a

3 drawing. They brought a sink in. They brought other large

4 items in, that I thought was just to --

5 THE COURT: So what you want them to go find the

6 car and everybody look at it, is that what you're saying?

7 MR. SPRINGER: No, I don't think that that would --

8 THE COURT: What is it that you're saying?

9 MR. SPRINGER: I just think that it's a relevant

10 question for the purposes of dismissing -- we haven't been

11 able to see it here. I mean, I think it's despondent of even

12 not having the seat. I mean, I think he could ask that

13 question and we could move on.

14 THE COURT: It's not an askable question.

15 MR. SPRINGER: I understand, Your Honor.

16 THE COURT: All right. Objection's sustained.

17 (Said bench conference having been completed, the

18 following proceedings were had in the presence of the

19 jury:)

20 THE COURT: Let's move on.

21 Q. Lieutenant Shemwell, did you, during the

22 investigation of this case, receive information that would

23 lead you to believe that there were two individuals involved

24 in the robbery of the Memphis Inn?

25 MR. HENDERSON: Objection, Your Honor. That calls

1 for conclusions, based on hearsay, anonymous tips and

2 everything. It would be like saying, "Did you find any

3 evidence showing he was guilty?" That's an opinion. It's

4 irrelevant and it's not going to help this jury do their job,

5 and that's sentence.

6 THE COURT: Come on back up here.

7 (Whereupon, a bench conference was had on the record in

8 the presence of the jury, but out of its hearing and the

9 following proceedings were had:)

10 MR. SPRINGER: Your Honor, I think this clearly

11 goes to the issue of residual doubt. The jury has a right to

12 consider, if there were evidence that there were two

13 individuals involved in this crime and one of those two

14 individuals was not Michael Rimmer, I think that that is

15 exactly what residual doubt is contemplated by the Supreme

16 Court in it's decision. I think anything else would be

17 to not letting the jury consider all the facts and

18 circumstances of the case.

19 MR. HENDERSON: I thought residual doubt has to be

20 based on evidence?

21 THE COURT: It does.

22 MR. HENDERSON: Not on anonymous tips.

23 MR. SPRINGER: Well, these weren't anonymous tips.

24 These are people that they talked to.

25 MR. HENDERSON: The question was, "Did you get any

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information?" That could have been dreams, it could have

been the psychic hot-line.

MR. SPRINGER: All right. If the phraseology of

the question is a problem, I think the question could be

rephrased, "Did you ever interview anybody who gave you any

information that would lead you to believe that two

individuals were involved?"

THE COURT: All right. Let us assume that one of

the individuals is your client. So what have we got now?

MR. SPRINGER: Well, that's obviously not our

assumption. Our assumption is that neither one of --

THE COURT: No, but I'm just saying. Let's assume

that he does.

MR. SPRINGER: And I think that that's information

that we're seeking from. I think, quite frankly, Your Honor,

it's imperative, especially in light of the fact that the

jury wasn't privy to the initial evidence and the testimony

that was given. That they have full understanding of what

the facts were and what the investigation revealed. An

investigation that came from some witnesses who testified at

the initial trial.

MR. HENDERSON: You couldn't have asked that

question in the first trial.

THE COURT: No, it wasn't askable then.

MR. SPRINGER: Well, maybe it isn't in the first

trial, but for sentencing purposes --

THE COURT: And why is it for sentencing purposes?

MR. SPRINGER: For actual innocence evidence if

-- there are --

THE COURT: We're only concerned about whether or

not the jury has enough information to sentence Mr. Rimmer to

something.

MR. SPRINGER: Absolutely.

THE COURT: One of the things that I put down here

from Austin, you're limited only to that -- what we've let in

so far and not vague leads.

MR. SPRINGER: I understand that.

THE COURT: That's Austin. And so, what are you

saying?

MR. SPRINGER: I understand that. There's been no

evidence -- there were -- and just obviously this hasn't been

testified to, yet. But, there were articles ran based upon

this evidence, full scale issues to the Commercial Appeal

about what they thought and what this investigation was

finding. And they know, from those particular articles, that

there were two individuals, Your Honor.

THE COURT: And now you're down to citing the

Commercial Appeal as authority?

MR. SPRINGER: No, no my concern is the Commercial

Appeal got that information from somewhere and artist were

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asked to identify Mr. Rimmer.

THE COURT: No, I can't handle it. No, I'm sorry.

objection's sustained.

(Said bench conference having been completed, the

following proceedings were had in the presence of the

jury:)

THE COURT: You may proceed.

MR. GARRETT: Thank you, Judge.

Q. Lieutenant Shemwell, you told us that at some point

in time Ms. Ricci's husband was brought to the scene; is that

correct?

A. He was there and left prior to my arrival that

morning.

Q. Do you know what time he arrived there?

A. Not exactly, no.

Q. Do you know what time the officers went to his home

that evening, if in fact, they did?

A. They went there that morning and they was in route

while I arrived, and I arrived on the scene, probably ten

minutes to 6:00 that morning, and they was already in route.

Q. They were in route to his home at ten minutes 'til

6:00?

A. That was the information that I had.

Q. Was Mr. Ellsworth ever considered a suspect in this

case?



Mr. Ellsworth back to his house to get that information.

responsible for this. And that night detective was taking

A. He had information that might lead to who was

back to his home to gather some information, or evidence?

Q. And did you tell us that the investigators went

suspect.

arrived, because he had information regarding a possible

left. And then, they were in route, at that time when I

been there, picked him up, he came to the hotel and then he

A. Exactly. And I just said that they had already

the hotel, a little before 6:00?

investigators were on the way to his home when you arrived at

Q. Didn't you just tell the jury a moment ago that the

scene, at ten minutes 'till 6:00 that morning.

the hotel and then left, prior to my arriving first on the

the investigators and notified of this. He made the scene at

6:00 o'clock in the morning. Mr. Ellsworth was awakened by

A. Six is what time I got there. It was long before

testified?

Q. And that would have been around 6:00 as you've just

that his wife was missing.

A. Yes, the investigators woke him up and advised him

evening at 1:30, or 2:00, or 3:00 o'clock?

Q. Did you ever establish his whereabouts on that

A. No.

That's correct.

Q. Do you know what information was given in that

regard?

A. I received several photographs and some kind of

small date book, or some kind of book, that supposedly

belonged to Michael Rimmer. And if I'm not mistaken, he was

looking for some letter, or a letter might have been

retrieved, that Mr. Rimmer had written to Ms. Ellsworth.

Q. How many photographs did you retrieve?

A. I don't recall.

Q. What did you do with these photographs?

A. They were tagged as evidence.

Q. Tell the jury what was reflected, or depicted in

these photographs?

A. I can remember that Mr. Rimmer was in a photograph

at the, I believe, it was either the Northwest Correctional

Center, or the other facility nearby there, in Lake County.

And I want to say that it was he, along with two, or maybe,

three more inmates. There was another photograph with Ricci

Ellsworth and Mr. Rimmer. And I don't recall if there were

any other photographs, I don't remember.

Q. But there was, at least, one in which Mr. Rimmer

and Ms. Ellsworth were shown, together?

A. That's correct.

Q. Did you make any determination as to when these

1 photographs were made?

2 A. I don't recall if they were dated on the back, but

3 my information was that there was, after his conviction for

4 raping and assaulting her, after he was sentenced, and I

5 believe he was at Lake County. It was in his first several

6 years that he was there.

7 Q. That's when these photographs would have been made?

8 A. That's my understanding.

9 Q. Did you do any investigation, Lieutenant Shemwell,

10 to establish whether Ms. Ellsworth had been visiting Mr.

11 Rimmer while he was in the penitentiary?

12 MR. HENDERSON: Again, Your Honor, objection on the

13 grounds of relevance, I'm going to object to the grounds of

14 remoteness and I'm going to object to the grounds of hearsay.

15 THE COURT: Come on up.

16 (Whereupon, a bench conference was had on the record in

17 the presence of the jury, but out of its hearing and the

18 following proceedings were had:)

19 MR. HENDERSON: I mean, at this point we're at the

20 point of asking the witness, "What did you find out in your

21 investigation?" How do you rebut that? I don't how I cross-

22 examine that kind of question. I don't know how a lawyer can

23 ask that kind of question. But it's clearly, I hope,

24 inadmissible.

25 THE COURT: Are you objecting to the form of the

question?

MR. HENDERSON: Form of the question and I'm

objecting to that question calls for hearsay, it calls for opinion, it calls for anonymous information and it calls for irrelevant information. "Did you find in your investigation find out something?" Yeah, the psychic told me that, that would be correct answer to the question? That's calling for irrelevant information, as well as hearsay.

THE COURT: There's an objection to the form of

the question.

MR. SPRINGER: Your Honor, I think, quite clearly,

that the state read into the record, or yesterday had the clerk read into the record, one of the aggravating circumstances that they intended to prove was rape. We've got a right to rebut that aggravated circumstance by trying to show --

THE COURT: Not after a guilty plea.

MR. HENDERSON: The aggravating circumstance is

that he has been convicted of a crime, the offense which

involves violence and this does not rebut that conviction.

MR. SPRINGER: No, actually you stated rape in your

opening statement, is what you stated that one of the

aggravating circumstances were. And I think, although we

can't argue, we can't argue with the conviction, the

conviction stands as it is. But, I think that we have right

1 to rebut it. And if there is evidence that she continued to  
2 see him and they continued to date and they continued to have  
3 a relationship after that, the jury can give whatever weight  
4 it wants to, as to whether or not the validity of those rape  
5 charges or not. But, I think that it's unfair for the state  
6 to come out and say that we're going to show that he raped  
7 her.

8 THE COURT: He didn't say that.

9 MR. SPRINGER: Well, one of the aggravators he

10 stated in his opening statement was, that he raped her.

11 THE COURT: He did say that in his opening

12 statements, but that doesn't mean that he's going to get it

13 in.

14 MR. HENDERSON: The law makes it clear that the

15 aggravating circumstance conviction, you cannot collaterally  
16 attack that conviction by going behind the facts of it.

17 THE COURT: Now, I've got to hear some case law on

18 that, because that's the last that I ever read was that. You  
19 can't collaterally attack it. Especially when he pled guilty

20 to that.

21 MR. GARRETT: Since the objection is to the form of

22 the question --

23 THE COURT: That was one, but now we've got an

24 additional one, when he explains what you all are doing. And  
25 I can tell you this, you cannot collaterally attack it.

1 MR. SPRINGER: We're not trying to attack the  
2 conviction. What we want is really rebutting simply one of  
3 the aggravating circumstances, which is one of the  
4 convictions, which one of them happens to be rape. We're not  
5 attacking the official record, we're trying to show what the  
6 relationship --  
7 THE COURT: I don't know what you call getting ten  
8 years for rape?  
9 MR. SPRINGER: Well, we're just trying to establish  
10 a relationship that she continued to have with him.  
11 THE COURT: It ain't a mistake, when you plead  
12 guilty.  
13 MR. SPRINGER: That's not in question. That  
14 conviction stands as it is. But, as we're heading there, we  
15 have a right to rebut any aggravating circumstance they put  
16 forth. And I think that if she continued to have a  
17 relationship with him, and it also goes to residual doubt. If  
18 they had a relationship that extended after he was released  
19 from prison, Your Honor, I think that that tends to show that  
20 he would have been less likely to, absent any proof, that  
21 there was some strained tension between him, as of one time  
22 after he was released, before this happened.  
23 MR. HENDERSON: And we'll try every prior too,  
24 under that theory of residual doubt. We can go back to the  
25 aggravated assault in 1985 and start litigating the facts of

1 that and that's where this leads to and that's why it is not

2 admissible.

3 MR. GARRETT: If I may add, Your Honor. The state

4 has put on proof regarding -- brought in witnesses from the

5 penitentiary to testify regarding threats that were made.

6 And that this man planned over a long period of time to

7 commit this murder while he sat in prison. I think that as

8 to that direct evidence, if there's proof to show that during

9 that same period of time, that Ms. Ellsworth was visiting

10 him, that it rebuts this contention that he had this sinister

11 plan to do her harm, once he is released from prison. Or, at

12 least the jury could draw that conclusion, or that inference

13 from this testimony.

14 THE COURT: So now there's another response to your

15 objection. You want to respond to that?

16 MR. HENDERSON: Yes, because the testimony also was

17 that he got mad when she quit coming to see him and that's

18 when he said he was going to kill her. So this doesn't rebut

19 that.

20 MR. GARRETT: The jury can weigh that and decide

21 whether it does, or whether it does not. I think it's

22 relevant for that purpose and the weight that's to be given

23 to it is for the jury.

24 MR. HENDERSON: Is there anything that is not

25 relevant?

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THE COURT: Yeah.

MR. HENDERSON: Well, I can't wait to see what it

is. So far they've taken the position that anything that

they want to ask this officer, "What did you find out as a

result of your investigation?" And he could answer this

question truthfully by saying, yes --

THE COURT: No, he can't.

MR. HENDERSON: -- the psychic told me that. Now,

the way that that question was raised, he could.

THE COURT: I know, but he can't do that. Even

though he may not even be able to tell you, yet, I don't

know. You can ask him, but you're stuck with the answer.

(Said bench conference having been completed, the

following proceedings were had in the presence of the

jury:)

(End of Volume Five)